Applicant Details

First Name	**Shawn**
Middle Initial	**A**
Last Name	**Shariati**
Citizenship Status	**U. S. Citizen**
Email Address	**ss4140@columbia.edu**
Address	**Address** Street **652 Dean Street, Apt. 1** City **Brooklyn** State/Territory **New York** Zip **11238** Country **United States**
Contact Phone Number	**516 770 6344**

Applicant Education

BA/BS From	**City University of New York-Queens College**
Date of BA/BS	**September 2009**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**May 18, 2017**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Columbia Human Rights Law Review**
Moot Court Experience	**No**

Bar Admission

Admission(s)	**New York, Washington**

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Recommenders

Eisenberg, Adam
adameisenberg@comcast.net
Chess, Faye
judgefayechess@gmail.com
Covello, Matthew
matthew.covello@kingcounty.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Shawn Ashkan Shariati
652 Dean Street, Apt. 1
Brooklyn, NY 11238
(516) 770-6344
ss4140@columbia.edu

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510â€‘1915

Dear Judge Walker,

I am a public defender and a 2017 graduate of Columbia Law School, where I was a Harlan Fiske Stone Scholar and a member of the Columbia Human Rights Law Review. I am writing to apply for a 2024-2025 term clerkship following a clerkship with Justice G. Helen Whitener of the Washington State Supreme Court for the 2023-2024 term.

Enclosed please find my resume, transcript, writing sample, and letters of recommendation from:

Supervisor Matthew Covello, (206) 477-8999, Matthew.Covello@kingcounty.gov
Judge Adam Eisenberg, (206) 684-8708, Adam.Eisenberg@seattle.gov
Judge Faye Chess, (206) 684-8712, Faye.Chess@seattle.gov

Should you need any additional information, please do not hesitate to contact me. Thank you for your time and consideration.

Sincerely,

Shawn Ashkan Shariati

Shawn Ashkan Shariati

652 Dean Street, Apt. 1
Brooklyn, NY 11238
(516) 770-6344
ss4140@columbia.edu

EDUCATION

Columbia Law School, New York, NY
J.D., 2017
Harlan Fiske Stone Scholar (for superior academic achievement)
Columbia Human Rights Law Review, A Jailhouse Lawyer's Manual
Challenging the Consequences of Mass Incarceration Clinic
Public Defender Students of Columbia Law School, *President*

The London School of Economics, London, UK
MSc., International Relations, 2011

Queens College of the City University of New York, New York, NY
B.A., Political Science and History, *cum laude*, 2009

EXPERIENCE

Washington State Supreme Court, Olympia, WA
Law Clerk to the Honorable G. Helen Whitener, Expected August 2023 – August 2024

The Legal Aid Society, New York, NY
Criminal Defense Practice Attorney, October 2019 – Present
Handled all aspects of criminal litigation, including arraignment, motion practice, trial, and probation hearings. Provided client-centered representation in collaboration with social workers, investigators, paralegals, and civil attorneys.

King County Department of Public Defense, Associated Counsel for the Accused, Seattle, WA
Attorney, August 2017 – August 2019
Handled all aspects of criminal litigation, including arraignment, motion practice, trial, contempt, and probation hearings. Provided client-centered representation in collaboration with social workers, investigators, paralegals, and civil attorneys. Handled all aspects of civil litigation concerning child support enforcement, at-risk youth, and child in need of services proceedings.

United States District Court for the Southern District of New York, New York, NY
Judicial Extern to the Honorable Valerie Caproni, January 2017 – April 2017
Conducted legal research, prepared memos, and drafted opinions concerning such topics as habeas corpus, sentencing, civil procedure, employment law, and copyright law.

The Bronx Defenders, New York, NY
Criminal Defense Practice Extern, September 2016 – December 2016
Helped attorneys representing clients in criminal proceedings. Prepared motions concerning facial insufficiency, speedy trial, suppression, and prosecutorial misconduct.

Family Defense Practice Intern, August 2016
Assisted attorneys representing clients in dependency proceedings. Prepared motions and memos concerning various sections of New York's Family Court Act.

The Legal Aid Society, New York, NY
Criminal Defense Practice Intern, June 2016 – August 2016
Supported attorneys representing clients in criminal proceedings. Prepared subpoenas. Wrote memos and motions concerning facial insufficiency, severance, speedy trial, and suppression. Represented clients charged with misdemeanors pursuant to New York's student practice order.

Neighborhood Defender Service of Harlem, New York, NY
Criminal Defense Practice Extern, September 2015 – May 2016
Helped attorneys representing clients in criminal proceedings. Represented clients charged with misdemeanors pursuant to New York's student practice order.

Orleans Public Defenders, New Orleans, LA
Law Clerk, May 2015 – August 2015
Assisted attorneys representing clients in criminal proceedings. Prepared various motions and memos concerning suppression and evidentiary rules.

New York Civil Liberties Union, New York, NY
Legal Intake Committee Member, January 2014 – August 2014
Managed the intake of and correspondences with clients. Aided attorneys with class action lawsuits concerning New York's criminal legal system.

Filipino American Legal Defense & Education Fund, New York, NY
Legal Assistant, September 2012 – May 2014
Helped attorneys representing clients with immigration issues. Created and

managed pro bono immigration legal clinics in collaboration with other non-profit organizations and bar associations.

Haitian Family Resource Center, New York, NY
Legal Assistant, July 2012 – September 2012
Assisted attorneys representing clients with immigration issues. Helped prepare community events in collaboration with local churches.

United Nations – Department of Political Affairs, New York, NY
Intern – Office of the Assistant Secretary-General, June 2011 – October 2011
Produced reports on political and security developments around the world. Managed the intake of correspondences from governments and other UN missions. Prepared talking points for the Secretary-General during the meeting of the General Assembly.

MEMBERSHIPS

Middle Eastern Legal Association of Washington, *Vice President*, 2018-2019

BAR ADMISSIONS

Washington

New York

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Shawn Ashkan Shariati
SSN#: XXX-XX-2203
SCHOOL: SCHOOL OF LAW

DEGREE(S) AWARDED: Juris Doctor (Doctor of Law)
DATE AWARDED: May 17, 2017
PROGRAM: LAW

HARLAN FISKE STONE SCHOLAR-SECOND YEAR ENDING MAY 16

SUBJECT	COURSE NUMBER	TITLE	POINTS	GRADE
Fall 2014				
LAW	L 6101	CIVIL PROCEDURE	4.00	B+
LAW	L 6105	CONTRACTS	4.00	B+
LAW	L 6113	LEGAL METHODS	3.00	CR
LAW	L 6115	LEGAL PRACTICE WORKSHOP I	1.00	P
LAW	L 6118	TORTS	4.00	B+
Spring 2015				
LAW	L 6108	CRIMINAL LAW	3.00	B
LAW	L 6116	PROPERTY	4.00	B
LAW	L 6121	LEGAL PRACTICE WORKSHOP I	1.00	P
LAW	L 6133	CONSTITUTIONAL LAW	4.00	B
LAW	L 6183	US & INTL LEGAL SYSTEM	3.00	B+
LAW	L 6679	FOUNDATION YEAR MOOT COUR	0.00	CR
Fall 2015				
LAW	L 6109	CRIMINAL INVESTIGATIONS	3.00	B+
LAW	L 6238	CRIMINAL ADJUDICATION	3.00	B+
LAW	L 6250	IMMIGRATION LAW	3.00	B+
LAW	L 6655	HUMAN RIGHTS LAW REVIEW	0.00	CR
LAW	L 6656	EXTERNSHIP: COMMUNITY DEF	2.00	CR
LAW	L 6656	EXT:COMMUNITY DEFENSE-FLD	2.00	CR
Spring 2016				
LAW	L 6241	EVIDENCE	4.00	B+
LAW	L 6269	INTERNATIONAL LAW	3.00	B+
LAW	L 6359	PROFESSIONAL RESP IN CRIM	3.00	A
LAW	L 6655	HUMAN RIGHTS LAW REVIEW	0.00	CR
LAW	L 6656	EXTERNSHIP: COMMUNITY DEF	2.00	CR
LAW	L 6656	EXT:COMMUNITY DEFENSE-FLD	2.00	CR
LAW	L 8785	READG GRP-ROLE PUB DEFENDER	1.00	CR
Fall 2016				
LAW	L 6483	REAL ESTATE TRANSACTIONS	3.00	B
LAW	L 6655	HUM RIGHTS LAW REV EDIT B	1.00	CR
LAW	L 6675	MAJOR WRITING CREDIT	0.00	CR
LAW	L 6792	EXT:BRONX DEFENDRS-HOLSTC	2.00	B+
LAW	L 6792	EXT:BRONX DEFENDRS-FIELD	2.00	CR
LAW	L 6927	REAL ESTATE DEVELOPMENT	2.00	B
LAW	L 8887	S 9/11 & RIGHTS/NON-CITIZ	2.00	B+
LAW	L 9175	S TRIAL PRACTICE	2.00	B+
Spring 2017				
LAW	L 6655	HUM RIGHTS LAW REV EDIT B	1.00	CR
LAW	L 6661	EXT:FED CT CLERK SOUTHERN	1.00	CR
LAW	L 6661	EXT:FED CT CLERK SDNY-FLD	3.00	CR
LAW	L 6672	MINOR WRITING CREDIT	0.00	CR
LAW	L 9172	SEM-ADVANCED TRIAL PRACTI	2.00	A-
LAW	L 9256	MASS INCARCERATION CLINIC	3.00	B+
LAW	L 9256	MASS INCARCERATN CLNC-PRJ	4.00	CR

This official transcript was produced on
MAY 19, 2017.

SEAL OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

Barry S. Kane
Associate Vice President and University Registrar

TO VERIFY AUTHENTICITY OF DOCUMENT, THE BLUE STRIP BELOW CONTAINS HEAT SENSITIVE INK WHICH DISAPPEARS UPON TOUCH

ADAM EISENBERG
JUDGE

August 15, 2022

To Whom It May Concern:

It is my honor to write a letter of recommendation for Shawn Shariati for a Federal clerkship. I believe he is an excellent attorney, and he would do a fantastic job working for a Federal judge.

Seattle Municipal Court handles all misdemeanors and gross misdemeanors that occur in the City of Seattle. From August 2017 to August 2019, Mr. Shariati appeared as a public defender in my court on a regular basis. He was always well prepared for his cases, extremely professional toward court staff and opposing counsel, and advocated strongly and effectively for his clients. He also demonstrated a keen knowledge of the law, and a creative flair when it came to presenting legal arguments before the court.

Mr. Shariati is a very compassionate attorney and human being. Many of his clients struggled with mental health and drug issues, and he was frequently placed in the very difficult position of having to advocate per his clients' wishes even when those might be contrary to their health and well-being. He always accomplished this with great skill and sensitivity.

Ultimately, I have great respect for Mr. Shariati's skill and talents as an attorney, and I'm certain he will shine in any clerkship.

Yours sincerely,

Adam Eisenberg
Presiding Judge, Seattle Municipal Court

Seattle Municipal Court, P.O. Box 34987, Seattle, WA 98124-4987
Telephone: (206) 684-5600
seattle.gov/courts

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Shawn Shariati for a clerkship.

I sit as a judge on Seattle Municipal Court, which is a court of limited jurisdiction in Seattle, WA. As an attorney for the Associated Counsel for the Accused (ACA) for King County Department of Public Defense, Shawn routinely appeared in front of me on court matters ranging from trials, arraignments, pre-trial hearings, sentencing hearing, and review hearings.

Shawn is well versed on Washington State laws. He generated well-developed and comprehensive defenses for his clients. I know Shawn to be of high intelligence and good character. He approached his work at ACA with due diligence, taking pride in honest representation, and excellent work ethics. Shawn demonstrated that he could work collaboratively with the court's participants, e.g., prosecutors, probation officers, police officers, defense attorneys, and community organizations in order to create an equitable and accessible criminal justice system.

Shawn will assist you greatly with the achievement of goals and objectives set forth by your chambers. I believe Shawn is regarded as attorney who committed to the rule of law and dedicated to making sure that courts of law are considered an independent and coequal branch of government which is accessible to the public and provides fair and impartial justice.

I have no doubt Shawn will be an invaluable asset to your court. If you would like to speak directly to me about Shawn's candidacy, please feel free to contact me.

Sincerely,

Judge Faye R. Chess

Faye Chess - judgefayechess@gmail.com

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

My name is Matthew Covello, I am the attorney supervisor for the Seattle Municipal Court Unit of King County Public Defense/ACAD. This letter is a recommendation for Shawn Shariati as an attorney. I supervised Mr. Shariati, in full capacity, for several years.

He was a team player, always volunteering to assist when necessary. He was also a leader and assisted me in running a very large and complex unit of public defenders.

Mr. Shariati has proven to be a competent, diligent, and self-motivated public defender. He represented clients at all levels of criminal proceedings (arraignment through review/probation hearings) and did so without incident. He did not receive a single complaint even though he represented literally hundreds of clients during this time.

It is important to note that Seattle Municipal Court is the largest court by volume in the region, and has a very high percentage of clients who suffer from mental health, addiction, and homelessness. These can be some of the most difficult clients to deal with, and Mr. Shariati interacted with these clients as though he was a veteran public defender.

Mr. Shariati showed good writing skills and is a competent advocate. He is eager to learn the law and was a “team player” during his time in our office. He was also well-liked by the staff, attorneys, and support staff alike. There were no incidents of concern during the time that he was employed at King County.

I did not want him to leave our office and would want to hire him if he wished to return. Please contact me if you have any further questions.
Sincerely,

Matthew Covello
Attorney Supervisor, Seattle Municipal Court and Interim Senior Supervisor
(206) 477-8999
matthew.covello@kingcounty.gov

Writing Sample

Shawn Ashkan Shariati
652 Dean Street, Apt. 1
Brooklyn, NY 11238
(516) 770-6344
ss4140@columbia.edu

Attached are two writing samples.

1. An opinion denying a motion on procedural grounds.
2. A motion to suppress evidence and dismiss a criminal case.

Sample #1

QUARK *v*. UNITED STATES

AARON SATIE, United States District Judge:

Quark ("Petitioner"), proceeding *pro se*, moves to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (hereafter, "Pet'r Mot."), Dkt. 1. For the following reasons, Petitioner's Motion is DISMISSED as untimely.

BACKGROUND

Petitioner pled guilty to the crimes of conspiracy to commit access device fraud and aggravated identity theft in connection with a scheme involving fraudulently obtained debit and credit cards. Transcript of March 10, 2014 Court Appearance (hereafter, "March 10 Tr."), *United States v. Rom*, No. 13 CR. 795 (AS), (S.D.N.Y. 2013), Dkt. 54, at 27. On July 22, 2014, this Court sentenced Petitioner to time served for the conspiracy count and two years imprisonment for aggravated identity theft, to run consecutively to the conspiracy sentence. Transcript of July 22, 2014 Court Appearance (hereafter, "July 22 Tr."), *Rom*, Dkt. 78, at 24–26. Additionally, the Court ordered Petitioner to pay approximately $17,000 in forfeiture and a similar amount in restitution. *Id*. Judgment was entered on July 22, 2014. Judgment, *Rom*, Dkt. 77 at 1. Petitioner did not pursue a timely direct appeal of his conviction.[1] Order on Motion for Leave to Appeal (hereafter, "Leave to Appeal Order"), *Rom*, Dkt. 97, at 2.

On September 21, 2015, Petitioner filed a motion seeking relief pursuant to 28 U.S.C. § 2255, under the grounds that he received ineffective assistance of counsel. Pet'r Mot. At 1; Memorandum of Law in Support Motion to Vacate, Set, Aside or Correct Sentence (hereafter, "Pet'r Mem."), Dkt. 2,

[1] On October 19, 2014, Petitioner filed a motion for leave to file a late notice of appeal pursuant to the Federal Rules of Appellate Procedure Rule 4(b)(4). Motion to File Late Notice of Appeal (hereafter, "Mot. Late Appeal"), Rom, Dkt. 87, at 1. Petitioner's motion was denied on March 11, 2014. Leave to Appeal Order at 2.

at 1. Petitioner asserts that he received ineffective assistance because his counsel: (1) forced him to plead guilty despite the Government's "failure to show that Petitioner knowingly committed aggravated identity theft," and (2) did not contest the "improper imposition of forfeiture as restitution." Pet'r Mem. At 2.

On October 16, 2015, this Court directed Petitioner to show cause as to why his motion should not be denied as time-barred. Order Directing Affirmation (hereafter, "Order"), Dkt. 4 at 2. Petitioner subsequently filed an Affirmation stating that his lateness was due to: (1) inadequate access to prison library resources; (2) language barriers; and (3) denial of access to his legal files. Affirmation, Dkt. 5, at 1–3. On February 14, 2016, the Government filed a memorandum in opposition to the Petitioner's Motion, arguing that Petitioner's motion is procedurally barred as untimely under the Antiterrorism and Effective Death Penalty Act of 1996 (hereafter, "AEDPA") and that the Petitioner's counsel was not ineffective. Memorandum of Law of the United States in Opposition to Petitioner's Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct His Sentence (hereafter, "Gov. Mem."), *Rom*, Dkt. 130, at 15–26.[2]

DISCUSSION

AEDPA established a one-year statute of limitations for the filing of a motion pursuant to 28 U.S.C. § 2255. *See* 28 U.S.C. § 2255(f). A Section 2255 motion is timely only if it is filed within one year from the latest of: (1) the judgment of conviction becoming final; (2) a government-created impediment to making such a motion being removed; (3) the right asserted being initially recognized by the Supreme Court, if the right has been made retroactively applicable to cases on collateral review; or (4) the facts supporting the claims being discoverable through the exercise of due diligence. *See* 28 U.S.C. § 2255(f). Because Petitioner has not alleged that the Government impeded the filing of his

[2] The Government mistakenly filed their Memorandum of Law in Opposition of Petitioner's Motion in *United States v. Rom*, No. 13 CR. 795 (AS), (S.D.N.Y. 2013).

motion, that the Supreme Court has recently recognized any rights he his asserting, or the discovery of any new facts supporting his claim, the relevant date for calculating the statute of limitations is the date on which the judgment of conviction became final.

"[A]n unappealed federal criminal judgment becomes final when the time for filing a direct appeal expires." *Moshier v. United States*, 402 F.3d 116, 118 (2d Cir. 2005). Because a criminal defendant must file a notice of appeal within fourteen days after the entry of judgment, an unappealed conviction becomes "final" for the purposes of the one-year AEDPA limitations period fourteen days after judgment is entered. *See* Fed. R. App. P. 4(b).

Judgment was entered in Petitioner's criminal case on July 22, 2014, and Petitioner did not pursue a timely direct appeal of his conviction. Leave to Appeal Order at 2. Therefore, Petitioner's conviction became final on August 5, 2014. To be timely Petitioner's motion must have been filed on or before August 5, 2015. Petitioner's motion, which was dated August 31, 2015, Pet'r Mot. At 14, is therefore untimely.[3]

The one-year statute of limitations for Section 2255 motions may be equitably tolled. *Green v. United States*, 260 F.3d 78, 82 (2d Cir. 2001). Equitable tolling is available only in rare and exceptional circumstances. *Smith v. McGinnis*, 208 F.3d 13, 17 (2d Cir. 2000). To equitably toll the statute, the petitioner must establish that (a) "extraordinary circumstances" prevented him from filing a timely motion, and (b) he acted with "reasonable diligence" during the period for which he seeks tolling. *Martinez v. Superintendent of E. Corr. Facility*, 806 F.3d 27, 31 (2d Cir. 2015).

Petitioner argues that his motion should not be time-barred because he had inadequate access to prison library resources, is unable to read or write English, and was unable to procure his legal files from counsel. Affirmation

[3] The Second Circuit recognizes the "prison mailbox rule," which states that a *pro se* prisoner "satisfies the time limit for filing a notice of appeal if he delivers the notice to prison officials within the time specified." *Noble v. Kelly*, 246 F.3d 93, 97 (2d Cir. 2001). Thus, although Petitioner's habeas motion was not received by this Court until September 21, 2015, the Court will consider the motion to have been filed on August 31, 2015.

at 1–5. Although the Court is sympathetic to Petitioner's circumstances, Petitioner's reasons do not provide a basis for equitable tolling. *See, e.g., Grullon v. United States*, No. 05 CIV. 1810 (DAB), 2007 WL 2460643, at *1 (S.D.N.Y. Aug. 27, 2007) (restricted prison law library access is not a "circumstance so rare or exceptional to warrant any tolling of the statute of limitations."); *Zhang v. United States*, No. 01 CIV. 2591 (DAB), 2002 WL 392295, at *3 (S.D.N.Y. Mar. 13, 2002) (limited knowledge of the English language, absence of legal assistance program at the correctional facility, and inability to communicate with assistants at the law library insufficient grounds for equitable tolling); *Davis v. McCoy*, No. 00 CIV. 1681 (NRB), 2000 WL 973752, at *2 (S.D.N.Y. July 14, 2000) ("inability to obtain documents does not rise to the level of extraordinary circumstances").

CONCLUSION

For the foregoing reasons, Petitioner's 28 U.S.C. § 2255 motion is time-barred because it was not timely filed, and Petitioner has not established that he is entitled to equitable tolling. Therefore, Petitioner's motion is DISMISSED.

When a motion is denied on procedural grounds, the petitioner may obtain a certificate of appealability if he shows "that jurists of reason would find it debatable whether the motion states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Eltayib v. United States*, 294 F.3d 397, 400 (2d Cir. 2002). Because the late filing of this motion is not debatable, the Court declines to issue a certificate of appealability.

Sample #2

Shawn Ashkan Shariati
Attorney for Julian Bashir

Municipal Court
For the City of Seattle, Washington

City of Seattle, Plaintiff; v. **Julian Bashir**, Defendant	Case No. DS9-000 **Motion to Suppress and Dismiss**

The Defense moves for the following:

1. Dismissal of count 1, Driving Under the Influence ("DUI"), because the police lacked probable cause for the crime at the time of Mr. Bashir's arrest.

2. Dismissal of both counts 1, Driving Under the Influence, and 2, False Reporting, because the Prosecution will be unable to meet their burden of production with the suppression of unlawfully gathered statements.

Sample #2

FACTS

Officers J'Dan and Duras were on bike duty, patrolling the neighborhood of Belltown, watching the bars close after the New Year's celebration on January 1, 2018. *See* GO#2018-000000, Page 10 of 51. Around 2 A.M., they were dispatched to the intersection of First Avenue and Bell Street, where a woman was allegedly pushed out of a car. *Id*. They came upon the scene and saw a woman, Jadzia Dax, laying on the road, crying and unintelligible, and a man, Julian Bashir, trying to help Jadzia up.

Officer J'Dan tended to Jadzia in the street, and spoke with a witness on the scene, Kira Nerys. Kira told Officer J'Dan that she witnessed a woman being pushed out the passenger side of a car, followed by a guy getting out of the same car, trying to get the woman back inside the car. *See* AXON_Body_2_Video_2018-01-01_0215-file 5, at 2:55. Kira did not see who was driving the car. *Id*.

In almost no time, there were approximately seven officers on the scene: T'Kuvma, Kahless, Worf, Mogh, Noggra, Duras, and J'Dan. *See* GO#2018-000000, Page 20 of 51. Surrounded by officers, Mr. Bashir was questioned about what happened in the car. When first asked for his name, Mr. Bashir gave the name Benjamin Sisko, *See* AXON_Body_2_Video_2018-01-01_0215, at 2:45. After intense questioning about his name, an officer yelled at Mr. Bashir, "he's lying about his name and he has a warrant." *See* AXON_Body_2_Video_2018-01-01_0215, at 8:45. Mr. Bashir was clearly not free to leave, surrounded by officers who would arrest him on a warrant. *See* AXON_Body_2_Video_2018-01-01_0215, at 9:55. Officers continued to question Mr. Bashir about his name and they knew the answers would likely be self-incriminating. Mr. Bashir ultimately gave his name soon after being

Sample #2

yelled at. *See* AXON_Body_2_Video_2018-01-01_0215, at 10:08. Mr. Bashir was never given a *Miranda* warning.

The officers moved their investigation from the crime of False Reporting to the crime of Driving Under the Influence. This investigation occurred even though no officers or civilian witnesses observed Mr. Bashir driving. *See* AXON_Body_2_Video_2018-01-01_0215, at 11:00. Sometime later the "DUI officer," Officer Gowron, arrived at the scene. Officer Gowron directed Mr. Bashir to the sidewalk and began questioning him to investigate a possible DUI. *See* AXON_Body_2_Video_2018-01-01_0229, at 2:40. Mr. Bashir, in response to questioning, told Officer Gowron he had "two shots." *See* AXON_Body_2_Video_2018-01-01_0229, at 4:00. Officer Gowron told Mr. Bashir "I'd like to do some field sobriety tests with you." *See* AXON_Body_2_Video_2018-01-01_0229, at 4:15. First, Officer Gowron administered the horizontal gaze nystagmus test ("HGN"), which Mr. Bashir completed. *See* AXON_Body_2_Video_2018-01-01_0229, at 5:03. Then Officer Gowron then administered the walk and turn test. *See* AXON_Body_2_Video_2018-01-01_0229, at 7:05. As Officer Gowron explained the test, Mr. Bashir interrupted Officer Gowron to inform him about a physical condition. *See* AXON_Body_2_Video_2018-01-01_0229, at 8:01. Mr. Bashir had surgery on his feet. *Id*. One is longer than the other, and he had mobility and balance problems because of it. *Id*. After Mr. Bashir completed the walk and turn test, Officer Gowron attempted to explain the portable breath test ("PBT") to Mr. Bashir and asked him to take it: "I got one last thing, it's a voluntary test, it's a PBT, the portable breath tester, you're gonna do that?" *See* AXON_Body_2_Video_2018-01-01_0229, at 9:02. Mr. Bashir agreed and gave a breath sample. *See* AXON_Body_2_Video_2018-01-01_0229, at 10:02. When the results of the PBT came in, Officer Gowron said, "it's a little higher than I expected it to be." *See* AXON_Body_2_Video_2018-

Sample #2

01-01_0229, at 10:20. Mr. Bashir was cuffed soon after, and after he was searched, he was given the *Miranda* warning. *See* AXON_Body_2_Video_2018-01-01_0229, at 12:18.

ARGUMENT

1. The Court must dismiss count 1, Driving Under the Influence, because the police lacked probable cause for the crime at the time of arrest.

An arrest is constitutionally valid when, at the moment the arrest was made, the officer had probable cause to arrest, and at that moment, facts and circumstances within the officer's knowledge, and of which the officer had reasonably trustworthy information, were sufficient to warrant a prudent man in believing that the defendant had committed or was committing an offense. *Beck v. State of Ohio*, 379 U.S. 89, 91 (1964). In a DUI arrest, the question is whether the investigating officer, at the time of the arrest, had knowledge or reasonably trustworthy information that the defendant was driving a motor vehicle while under the influence. *O'Neill v. Department of Licensing*, 62 Wash. App. 112, 116 (Div. 1 1991).

1.1. The PBT results cannot be considered for the purposes of probable cause because they were administered in violation of Washington Administrative Code ("WAC") 448-15-030.

WAC 448-15-030 describes the "policies and procedures approved by the state toxicologist" that an operator of the PBT must follow. If the policies and procedures approved by the state toxicologist are not followed, the results of the test are not valid. *State v. Smith*, 130 Wash. 2d 215, 221 (1996).

Sample #2

One of the "policies and procedures" is an officer administering the PBT must advise the subject, prior to the test, that: (1) it is a voluntary test, and (2) it is not an alternative to any evidential breath alcohol test. WAC 448-15-030(1).

When Officer Gowron brought up the PBT to Mr. Bashir, he said, "I got one last thing, it's a voluntary test, it's a PBT, the portable breath tester, you're gonna do that?" See AXON_Body_2_Video_2018-01-01_0229, at 9:02. Officer Gowron failed to mention that the PBT "is not an alternative to any evidential breath alcohol test," which is required by WAC 448-15-030. Because the test was done in violation of WAC 448-15-030, the results are not valid and cannot be considered for purposes of probable cause.

1.2. The field sobriety tests ("FST") results cannot be considered for purposes of probable cause because they were not voluntary.

There is "no legal obligation to perform a field sobriety test." *City of Seattle v. Personeus*, 63 Wash.App. 461, 465–66 (1991). A suspect's right to refuse a field sobriety test is based in common law. *City of Seattle v. Stalsbroten*, 138 Wash.2d 227, 236–37 (1999). Therefore, field sobriety tests are voluntary and are subject to constitutional requirements concerning voluntariness. Statements must be the "product of an essentially free and unconstrained choice by its maker." *Schneckloth v. Bustamante*, 412 U.S. 218, 225 (1973). This is done by assessing the "totality of the characteristics of the accused and the details of the interrogation." *Id*., at 226. Characteristics that have been considered for voluntariness include the lack of any advice to the accused of his constitutional rights and repeated and prolonged questioning. *Id*.

For several reasons, Mr. Bashir's consent to perform the field sobriety tests was not voluntary. First, Officer Gowron did not tell Mr. Bashir that the test was voluntary, rather, he simply tells Mr. Bashir "I'd like to do some field

sobriety tests with you." *See* AXON_Body_2_Video_2018-01-01_0229, at 4:20. Second, Mr. Bashir was never informed of his right to silence or counsel. Third, Mr. Bashir was questioned at length by several officers. Fourth, Mr. Bashir was not free to leave, as he was informed of his outstanding warrants and was surrounded by several officers.

1.3. With the suppression of the PBT result and the FST results, the evidence at the time of arrest was not sufficient for probable cause, requiring the Court to dismiss count 1, Driving Under the Influence.

At the time of arrest, the evidence supporting inferences that Mr. Bashir committed the crime of DUI were the following: (1) admission of drinking two shots of Hennessey; (2) a faint odor of intoxicants; and (3) watery eyes. *See* GO # 2018-00000, Page 36 of 51. These are not enough to establish probable cause for the crime of DUI, especially when considering the other overwhelming evidence that supported the inference that Mr. Bashir did not commit the crime of DUI.

First, no one witnessed Mr. Bashir driving on that night and admissions to driving occurred after his arrest. To have probable cause to arrest for the crime of DUI, the officer must have had knowledge or reasonably trustworthy information that the defendant had been driving at the time of the arrest. Civilian witness, Kira Nerys, spoke with police. She was asked if she saw Mr. Bashir driving and she did not. *See* AXON_Body_2_Video_2018-01-01_0215-file 5, at 2:55. No officers saw Mr. Bashir driving. *See* AXON_Body_2_Video_2018-01-01_0214, at 11:00.

Second, there were many other facts that supported the inference that Mr. Bashir did not commit the crime of DUI. The car that police believed Mr.

Sample #2

Bashir drove, a Chrysler 300C, was: (1) parked when police arrived; and (2) registered to Jadzia Dax, the woman lying on the street. When police first saw Jadzia Dax lying on the street, she was next to the driver side of the car. And lastly, no car key was recovered on Mr. Bashir.

Even without the suppression of the field sobriety tests, there would still not be enough facts to rise to probable cause because Mr. Bashir's performed well on the field sobriety tests. When he administered the HGN test, Officer Gowron did not see any nystagmus prior to 45 degrees and only saw nystagmus at maximum deviation. *See* GO # 2018-00000, Page 36 of 51. When discussing the HGN results with another officer, Officer Gowron said, "[Mr. Bashir's] eyes were pretty good." *See* AXON_Body_2_Video_2018-01-01_0229, at 13:55. With the walk and turn test, other than doing the turn incorrectly by pivoting on his toes, doing ten steps instead of nine, and missing heel to toe on one step, Mr. Bashir completed the test. *See* GO # 2018-00000, Page 36 of 51. Mr. Bashir informed Officer Gowron of a physical issue he had with his feet, which could affect the reliability of the walk and turn test's results. *Id*; and *see* AXON_Body_2_Video_2018-01-01_0229, at 8:15. When discussing the walk and turn results with another officer, Officer Gowron said, "[Mr. Bashir's] steps were not good," however, "[the steps] were the best [he'd] seen in a long time." *See* AXON_Body_2_Video_2018-01-01_0229, at 13:55. Because there was no probable cause for the crime of DUI at the time of arrest, the Court must dismiss count 1.

Sample #2

2. The Court must dismiss counts 1, Driving Under the Influence, and 2, False Reporting, because the Prosecution will be unable to meet their burden of production with the suppression of unlawfully gathered statements.

An individual is considered in "custody" for purposes of *Miranda* when their liberty of action is deprived in any significant way. *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). An individual is considered "interrogated" for the purposes of *Miranda* when state agents use any words or actions that the agent "should know are reasonably likely to elicit an incriminating response." *Rhode Island v. Innis*, 446 U.S. 291, 292 (1980). If an individual will be subjected to "custodial interrogation," they must be given the *Miranda* warnings from the outset. *Miranda*, 384 U.S. at 467.

2.1. Mr. Bashir was in "custody" for purposes of *Miranda* when questioned about his name.

When police arrive at the scene, they immediately moved Mr. Bashir from where he was originally located. Mr. Bashir was surrounded by seven officers. At some point, Mr. Bashir was told he had a warrant. *See* AXON_Body_2_Video_2018-01-01_0214, at 8:50. Another officer tells Mr. Bashir "[he will] stay here all night to process him." *See* AXON_Body_2_Video_2018-01-01_0215-file 2, at 9:29. Mr. Bashir was clearly not free to leave and was seized; Mr. Bashir was in "custody" for the purposes of *Miranda*.

Sample #2

2.2. Mr. Bashir was "interrogated" for purposes of *Miranda* when questioned about his name.

After depriving Mr. Bashir of a significant amount of his liberty of action, Officer Kahless yelled at Mr. Bashir, telling Mr. Bashir that he knows Mr. Bashir is lying about his name. See AXON_Body_2_Video_2018-01-01_0214, at 8:49. Officer Kahless continued to ask Mr. Bashir what his real name was, and it is at this point where Mr. Bashir is subject to "interrogation" for the purposes of *Miranda*. Officer Kahless knew "[Mr. Bashir] [was] lying," and asked him what his real name was. Officer Kahless knew that the following answer would likely incriminate Mr. Bashir with regards to the crime of False Reporting.

2.3. Mr. Bashir was never given his *Miranda* warnings at the outset of his "custodial interrogation."

If Mr. Bashir was informed of his right to silence or an attorney, the investigation may have stopped. Because he was not informed those rights, it prolonged his interrogation, allowing officers to unlawfully obtain evidence. Defense requests that all statements and evidence derived from that unlawful custodial interrogation be suppressed, starting from the point where Officer Kahless yelled at Mr. Bashir, stating that he knew that Mr. Bashir was lying. This would include statements, observations, consent to perform the FST and PBT, and consent to blow into the DataMaster.

2.4. With the suppression of unlawfully gathered statements, the Prosecution can no longer meet their burden of production,

requiring the Court to dismiss counts 1, Driving Under the Influence, and 2, False Reporting.

Applicant Details

First Name	**Elizabeth (Betsy)**
Last Name	**Sheppard**
Citizenship Status	**U. S. Citizen**
Email Address	**eshep@umich.edu**
Address	**Address** Street **3009 Park Ave** City **Lafayette Hill** State/Territory **Pennsylvania** Zip **19444** Country **United States**
Contact Phone Number	**4842136701**

Applicant Education

BA/BS From	**George Washington University**
Date of BA/BS	**May 2020**
JD/LLB From	**The University of Michigan Law School** **http://www.law.umich.edu/currentstudents/careerservices**
Date of JD/LLB	**May 5, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**University of Michigan Journal of Law Reform**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Michigan Law Oral Advocacy Competition** **Henry M. Campbell Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Edmonds, Mira
edmondm@umich.edu
Mortenson, Julian
jdmorten@umich.edu
734-763-5695
Walker, Christopher
chris.j.walker@umich.edu
_734_ 763-3812
Becker, Ted
tbecker@umich.edu
734-763-6025

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third year law student at the University of Michigan originally from Lafayette, Hill Pennsylvania, and I am writing to apply for a clerkship position in your chambers for the 2024 term.

This summer, I will be working for a Philadelphia-based law firm, and plan to return to the Philadelphia area after graduation from law school, as my family still resides in the area. I am particularly excited about the opportunity to clerk for a judge in my own community and serve as a member of my community's legal process.

I am passionate about building a career in litigation, a passion which grew throughout my experience in law school. As a history major, I have always enjoyed research and writing, but during my first-year legal practice course, I gained exposure to new types of research and writing that further developed this interest. I especially enjoyed presenting my research through written briefs and oral advocacy simulations. This led me to participate in the Michigan First-Year Oral Advocacy Competition and to compete in Michigan's flagship moot court competition, in which I advanced to the quarterfinal round. In addition to these mock appellate experiences, I joined the Michigan Law mock trial team to gain exposure to the trial process.

My interest in litigation, however, extends beyond oral advocacy. In addition to my oral advocacy experience, I have completed substantive research and writing, such as for a student note. Through my work with the Michigan Journal of Law Reform, where I now serve as the managing production editor, I produced a note exploring qualified immunity for educators in the context of § 1983 suits. I have also completed research and writing through my practical lawyering experiences.
During my first-year summer, I worked for a small policy organization focused on reforming the criminal justice system. In this role, I conducted substantial case law research on issues affecting criminal law and criminal-adjacent topics, and I also analyzed pending Congressional legislation to determine its potential applicability to criminal justice reform efforts. Next, during my second year of law school, I directly represented clients through my university's Civil-Criminal Litigation Clinic, including in landlord-tenant, commutation, and private tort cases. This real-life litigation experience increased my interest in the judicial process generally and confirmed my passion for litigation.

I have attached the requested materials for your consideration. Letters of recommendation from the following individuals will follow under separate cover:

• Professor Ted Becker: tbecker@umich.edu, (734)-763-6025

• Professor Mira Edmonds: medmond@umich.edu, (734)-647-1964

• Professor Julian Mortenson: jdmorten@umich.edu, (734)-763-5695

• Professor Christopher Walker: chris.j.walker@umich.edu, (734)- 763-3812

Thank you for your time and consideration.

Sincerely,

Elizabeth Sheppard

Elizabeth (Betsy) Sheppard

3009 Park Avenue, Lafayette Hill, PA 19444
(484)-213-6701 • eshep@umich.edu
She/Her/Hers

EDUCATION

THE UNIVERSITY OF MICHIGAN LAW SCHOOL — Ann Arbor, MI
Juris Doctor — Expected May 2024

Journals: *University of Michigan Journal of Law Reform*, Managing Production Editor Vol. 57
Honors: Quarterfinalist, Henry M. Campbell Moot Court Competition, 2022-2023
Honors in Legal Practice
Activities: Women Law Student Association, Programming Chair
Mock Trial Team
Civil Rights Litigation Clearinghouse, Contributor, Fall 2020 – Winter 2023
Oral Advocacy Competition, 2022

THE GEORGE WASHINGTON UNIVERSITY — Washington, DC
Bachelor of Arts in history with a minor in French, *magna cum laude* — May 2020
Honors: Gardner G. Hubbard Memorial Prize for Excellence in U.S. History, Special Honors in History
Activities: Undergraduate Law Review, 2019-2020
Phi Alpha Theta, History Honors Society
Phi Alpha Delta, Pre-Law Fraternity

EXPERIENCE

DUANE MORRIS — Philadelphia, PA
Summer Associate — Summer 2023

CLAUSE 40 FOUNDATION — Washington, DC
Legal Intern — May 2022 – August 2022

- Conducted non-profit law and procedural due process research for a 501(c)(3) committed to ensuring due process rights for all.
- Compiled updates on Congressional legislation and sentencing data for lobbying efforts.

COLONIAL MIDDLE SCHOOL — Plymouth Meeting, PA
Long-term French Substitute — January 2021 – June 2021

- Organized and executed lesson plans for 11 French classes with 240 in-person, hybrid, and remote learners.
- Supported students through classwork, individual guidance, and softball coaching.

ABINGTON FRIENDS SCHOOL — Jenkintown, PA
Assistant Teacher — September 2020 – January 2021

- Served as in-person teacher for introductory and intermediate language classes alongside co-teachers instructing via Zoom.

THE CRAB HOUSE AT TWO MILE LANDING — Wildwood Crest, NJ
Food Runner — July 2020 – August 2020

- Engaged with restaurant clientele at a large, fast-paced restaurant, promoting enjoyable experiences.

YMCA CAMP TOCKWOGH — Worton, MD
Athletic Director — Summers 2018 & 2019

- Managed a team of 10 athletic staff members who led daily sports activities for over 400 campers per day.
- Developed curriculum and safety protocols for the athletics program, including the implementation of a target sports program.

ADDITIONAL

Languages: French (working proficiency), Spanish (elementary)
Interests: Watching French TV shows, making homemade pasta, and watching the Philadelphia Phillies

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Sheppard,Elizabeth A
Student#: 60014784

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2021	**(August 30, 2021 To December 17, 2021)**							
LAW	510	004	Civil Procedure	Maureen Carroll	4.00	4.00	4.00	B+
LAW	520	003	Contracts	Albert Choi	4.00	4.00	4.00	A-
LAW	540	002	Introduction to Constitutional Law	Julian Davis Mortenson	4.00	4.00	4.00	A-
LAW	593	016	Legal Practice Skills I	Ted Becker	2.00		2.00	H
LAW	598	016	Legal Pract:Writing & Analysis	Ted Becker	1.00		1.00	H
Term Total				**GPA: 3.566**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.566**		**12.00**	**15.00**	
Winter 2022	**(January 12, 2022 To May 05, 2022)**							
LAW	530	002	Criminal Law	Luis CdeBaca	4.00	4.00	4.00	A-
LAW	580	001	Torts	Kyle Logue	4.00	4.00	4.00	B
LAW	594	016	Legal Practice Skills II	Ted Becker	2.00		2.00	H
LAW	724	001	International Refugee Law	Betsy Fisher	3.00	3.00	3.00	A-
LAW	992	306	Research: Special Projects Civil Rights Litigation Clearinghouse	Margo Schlanger	2.00	2.00	2.00	A
Term Total				**GPA: 3.530**	**15.00**	**13.00**	**15.00**	
Cumulative Total				**GPA: 3.548**		**25.00**	**30.00**	

Continued next page >

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Sheppard,Elizabeth A
Student#: 60014784

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2022	**(August 29, 2022 To December 16, 2022)**							
LAW	669	002	Evidence	David Moran	3.00	3.00	3.00	B+
LAW	771	001	Progres Prosecution: Law&Pol'y	Eli Savit	2.00	2.00	2.00	A
				Victoria Burton-Harris				
LAW	799	001	Senior Judge Seminar	Ted Becker	2.00		2.00	S
LAW	885	007	Mini-Seminar	Susan Page	1.00			Y
			The Enduring Allure of Book Bans					
LAW	920	001	Civil-Criminal Litigation Clnc	Mira Edmonds	4.00	4.00	4.00	A-
				Victoria Clark				
LAW	921	001	Civil-Criminal Litig Clnc Sem	Mira Edmonds	3.00	3.00	3.00	A
				Victoria Clark				
Term Total				**GPA: 3.725**	**15.00**	**12.00**	**14.00**	
Cumulative Total				**GPA: 3.605**		**37.00**	**44.00**	
Winter 2023	**(January 11, 2023 To May 04, 2023)**							
LAW	428	001	Evidence Practicum	Daniel Hurley	2.00	2.00	2.00	A
LAW	569	001	Legislation and Regulation	Daniel Deacon	4.00	4.00	4.00	B+
LAW	674	001	Rules of Play:Sports Legal Sys	Richard Friedman	2.00	2.00	2.00	B+
LAW	677	001	Federal Courts	Chris Walker	3.00	3.00	3.00	A-
LAW	799	001	Senior Judge Seminar	Ted Becker	2.00		2.00	S
LAW	865	001	Law of American Federalism	Gil Seinfeld	2.00	2.00	2.00	A
LAW	886	007	Mini-Seminar II	Susan Page	0.00		0.00	S
			The Enduring Allure of Book Bans					
Term Total				**GPA: 3.607**	**15.00**	**13.00**	**15.00**	
Cumulative Total				**GPA: 3.606**		**50.00**	**59.00**	

Continued next page >

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Sheppard,Elizabeth A
Student#: 60014784

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2023	**(August 28, 2023 To December 15, 2023)**							
Elections as of:	05/30/2023							
LAW	641	001	Crim Just: Invest&Police Prac	Ekow Yankah	4.00			
LAW	681	001	First Amendment	Don Herzog	4.00			
LAW	780	001	Human Rights: Themes and Var	Steven Ratner	3.00			
LAW	893	001	Presidential Powers	Chad Readler	2.00			

End of Transcript
Total Number of Pages 3

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University of Michigan Law School
Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

F Fail.

H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.

P Pass when student has elected the limited grade option.*

PS Pass.

S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with great enthusiasm that I write this recommendation for Elizabeth ("Betsy") Sheppard. Betsy was my student during the Fall 2022 semester in the Civil-Criminal Litigation Clinic ("CCLC") at Michigan Law. The CCLC is a general litigation clinic in which law students work in teams of two on a variety of civil and criminal legal matters. I supervised Betsy's case work and taught her in the seminar component of the clinic. She performed with excellence in all aspects of the course. Betsy is smart and highly competent, while also being refreshingly straight forward and unpretentious. I have no doubt that she would be an excellent judicial clerk.

I supervised Betsy and her partner on an eviction matter and a sentence commutation case. In both cases, Betsy did top notch work. From early in the semester, I had the utmost confidence that Betsy was on top of all developments in her case work and that nothing would fall between the cracks. In the eviction matter, I was able to observe Betsy's oral advocacy in court and in negotiations with opposing counsel. She projected more confidence than she perhaps felt, such that it would have been hard for anyone to tell that this was her first court appearance and her first real-world negotiation. The case took far longer to resolve than it should have, due almost entirely to foot-dragging by the other side. Betsy did a great job pushing and prodding when necessary to keep things moving along, while never losing her cool despite a great many frustrations. She also engaged in effective client counseling, appropriately expressing empathy for her client's situation and advising her about her options.

I was also impressed with Betsy's written advocacy in the commutation case. She and her partner put together an elegantly written and compelling commutation application on behalf of their client. They showed their client great compassion despite his past offenses, and were able to build on that to write an effective narrative on his behalf. The first draft of the petition was already impressive, and it got better from there because of Betsy's ability to incorporate feedback effectively. Betsy worked well with her clinic partner, despite significant personality differences, showing appreciation for her partner's strengths and patience for his quirks.

Betsy was also a very active participant in the clinic seminar. She was always willing to contribute to class discussion but never dominated. Her comments were thoughtful and consistently enriched the conversation. Betsy performed strongly in the mock trial that is the capstone experience of the clinic seminar. It was clear that she prepared carefully and put a lot of thought into her trial strategy. As throughout the semester, she took feedback on her trial performance without a hint of defensiveness, which is not such an easy thing to do in that setting.
In sum, I have no hesitations in recommending Betsy for a position as your clerk, and I urge you to give serious consideration to her application.

Sincerely,

Mira Edmonds
Clinical Assistant Professor of Law

Mira Edmonds - edmondm@umich.edu

MICHIGAN LAW
UNIVERSITY OF MICHIGAN
701 South State Street
Ann Arbor, MI 48109-3091

JULIAN DAVIS MORTENSON
James G. Phillipp Professor of Law

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of my student Betsy Sheppard's application for a clerkship in your chambers. Betsy is a smart, dedicated, and engaging law student who has a natural talent for getting along with people. She'd be a great clerk, not only as a substantive contributor to the legal work of the chambers, but also as a thoughtful, constructive, and positive colleague.

I first got to know Betsy as a student in a 45-person section of constitutional law during her first semester on campus. Because the section was so small, I got to know the students especially well, and Betsy certainly stood out as someone who was a pleasure to get to know as a student and as a future lawyer. She was a bold and highly constructive participant in classroom conversation, always willing to participate and to take a risk on being wrong as part of the process towards getting to an understanding. I really admired that about her approach, especially since so many law students can be reluctant to explore ideas at first without being confident they completely understand the problem or are certain about the answer. Her willingness to engage in the process of working through hard ideas even in the face of uncertainty makes for a highly collaborative approach to classroom learning; it's really distinctive.

As an intellectual matter, Betsy has a highly pragmatic streak that's exceptionally useful in classroom discussion (not to mention in the work of lawyering), and that often characterized her interventions and our exchanges over the course of the semester. She'd raise her hand about some doctrinal distinction, meticulously and accurately summarize the substance of the point at issue, and then ask a version of the question: "why does this make a difference to people on the ground?" Sometimes it would be in reference to the way the same physical fact can present differently depending on what (invisible and only inferentially demonstrated) mental state you attribute to the actors in the legal problem. Other times it would be about the way that some event can easily be reframed to fit on one side or the other of a given legal test (her discussion of the Stafford Rate Cases from the commerce clause stands out in my memory in this regard). These questions were always posed with a precision that evidenced full familiarity with the black letter formulations—certainly it's not that she didn't take the doctrine seriously. It's that she took the first step (of understanding the doctrine), but then also was persistently interested in the second step: "do these formal differences make sense in a way that matters to something real?" It was great stuff from a first semester 1L.

Betsy's writing is very good and thoroughly reflects her strong analytical grasp of the legal materials she works with. Certainly her email communication with me has always been crisply expressed and substantively on point. And her Con Law exam was similarly well written, with nice execution of communicative structure at both the sentence and paragraph levels. Her unpretentious, focused style serves her as well in written communication as it does in personal discussion.

After law school and after clerking, Betsy plans to go into litigation. She's especially interested in trial work; her work in Michigan's Civil-Criminal Litigation Clinic whetted her appetite for on the ground work at the stage of developing cases, building records, and laying legal foundations—she finds the wide range of open-ended strategic thinking especially appealing. Her smarts, her level head, and her doctrinally-informed pragmatism will serve her well as a litigator in the long run in much the same way as they will help her be an effective law clerk in whatever chambers she ends up in.

Long story short, Betsy is terrific. Please don't hesitate to reach out to me if you have any questions; I'd be pleased to speak with you further on her behalf.

Best regards,

Julian Davis Mortenson

Julian Mortenson - jdmorten@umich.edu - 734-763-5695

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Betsy Sheppard for a clerkship in your chambers. Betsy was in my Federal Courts class this last semester, and she was a standout both in class and on the final examination. I am excited about her future in the legal profession and am confident she has the intellectual firepower and legal analysis and writing skills to excel as a law clerk after graduation.

It was a joy to have Betsy in class this last semester. From the outset, it was clear from her in-class participation and discussions in office hours that she was engaging critically and carefully with the course material. Her questions and comments demonstrated a deep understanding of the course material. As part of the course, Betsy and a fellow classmate did a terrific five-minute recap presentation on the constitutionalization of state law claims under Section 1983. This was one of the more difficult topics in the class, and Betsy did a fantastic job of distilling these complex issues for the rest of the class—both orally and with the use of PowerPoint visuals. This skill will obviously serve her well as a lawyer and a law clerk.

Once the final exam grades were unblinded, I was not at all surprised to see that she received one of the higher grades in the class. To prepare this letter, I reviewed her exam, and it did an excellent job spotting all of the major issues and articulating and applying the relevant legal rules. Her policy essay was also the best in class, nicely weaving together law and policy to recommend legislative action on qualified immunity. I should underscore that Federal Courts here at Michigan Law typically attracts some of the smartest and hardest-working students at the law school, and this class was no exception. We have a mandatory curve, and an A- is among the top third of the class. To put that in perspective, I know of at least four very sharp students who received a lower grade than Betsy who have already secured federal clerkships, including two on the federal courts of appeals. I would expect another dozen or more students with a lower grade on the final exam than Betsy's to secure clerkships in the near future.

Finally, I should underscore how wonderful it was to have Betsy in class. She exudes professionalism—a hard worker and careful listener who seems very receptive to constructive feedback. She strikes me as highly organized with careful attention to detail. But she is also a lot of fun, with a great sense of humor. She's the type of person who interpersonally would add a lot of value to a litigation team or judicial chamber. I am so excited to see the impact she will have on the legal profession in the years to come, and clerking in your chambers would obviously only expand her horizons.

I hope that you take a serious look at Betsy's application and that you will decide to interview her. If I can add anything else, please do not hesitate to contact me (734-763-3812; chris.j.walker@umich.edu).

Sincerely,

Christopher J. Walker
Professor of Law

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Ted Becker
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Clinical Professor of Law
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June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Elizabeth ("Betsy") Sheppard's application for a clerkship in your chambers. I know her well, and think so highly of her abilities that I have asked her to be one of my student assistants next year. Based on my knowledge of her academic abilities and work ethic, I am extremely pleased to recommend her. Betsy was a very capable student in my class, and I have absolutely no reservations about recommending her for a clerkship.

First, as to Betsy's legal abilities, I had the pleasure of working with her in the 2021-22 academic year in my Legal Practice course (as well as an ungraded "1L mini-seminar" in the winter semester called "Abraham Lincoln and Legal Ethics"). Legal Practice is a full-year course that introduces first-year law students to numerous experiential skills, such as common types of research and writing assignments that they will likely be asked to produce as practicing attorneys. The first semester emphasizes objective analysis of simulated client problems, as well as communicating that analysis to a senior attorney in a way that a legal audience would likely expect. The second semester switches focus to advocacy and other lawyering skills. Students meet individually with me on numerous occasions to discuss my comments on the drafts of their written assignments and how they might revise them so that they correspond with what a legal reader will likely expect.

Betsy was a genuine pleasure to have in class and to talk with outside of class, and her work was top notch. She received Honors in the course at the end of the year (limited to the top 20%). As that result might suggest, she consistently received high marks on all assignments, such as tying for the second-highest grade on the rewrite of her closed memo (the first major writing assignment of the first semester) and her pretrial and summary judgment briefs (the two major writing assignments in the second semester). Her legal research was thorough and effective, and she smoothly made the shift from objective analysis to advocacy. In short, Betsy consistently exceeded my expectations and her writing, analytical, research, and other skills were definitely above the norm for a first-year law student at that point in her legal career.

I met with Betsy individually on numerous occasions during office hours and as part of the mandatory conference process for various assignments. As mentioned above, I much enjoyed these discussions: she was professional, she took the assignments seriously and wanted to increase her proficiency as a legal writer because she knew how important that would be in her career, and she put in the effort to make that happen. I didn't have to tell her things twice; she recognized without prompting when comments or suggestions I might have made on an earlier assignment remained applicable for later projects (this is something that many 1Ls in my experience have difficulty mastering). In sum, she brought a "real world" approach to my course, and that showed in the quality of her work product.

I was so impressed with Betsy's performance in my course that, in my capacity as Director of the Legal Practice Program, I asked her to be one of the "senior judge" student assistants for a newly hired professor during the current academic year who did not have previous students of his own to tap as assistants. Among other things, upper-level student assistants in Legal Practice review student papers, hold office hours, and serve as mentors for 1Ls, so a strong work ethic and winning personality are a must. As I expected, Betsy did an exemplary job for the other professor, and I am pleased that she then accepted my offer to serve as one of my assistants in the upcoming year. As part of her duties, she will be preparing a writing assignment for my class use in a following year. This will require her to create the facts of the problem, conduct the research necessary to find all relevant cases, refine the problem as necessary in light of what the research shows, and then prepare the assignment materials. I look forward to working with her next year on this project.

In summary, based on Betsy's demonstrated level of performance in my course, I have no doubt that she has what it takes to make an excellent judicial clerk. I believe that her analytical and writing abilities will make her a valuable resource for you. The abilities and work ethic she's demonstrated in my class and as a student assistant for the Legal Practice Program leave me no doubt that she will succeed.

I would be happy to discuss Betsy's qualifications and background in more detail. Please do not hesitate to contact me at the above-listed phone number or email address.

Ted Becker - tbecker@umich.edu - 734-763-6025

Sincerely,

/Ted Becker/

Edward R. “Ted” Becker
Director Legal Practice Program
Clinical Professor of Law

Elizabeth (Betsy) Sheppard

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She/Her/Hers

WRITING SAMPLE

I wrote this brief for the University of Michigan Law School's flagship moot court competition, which involved a fictional case, *Sutherland Bank v. Consumer Financial Protection Bureau*. This case raised two main questions. The first concerned the right to a jury trial in administrative proceedings, and the second concerned presidential removal power over executive officers. This brief is a writing sample of my own work, and it has not been edited by others.

Elizabeth (Betsy) Sheppard
Writing Sample

STATEMENT OF THE CASE

A. Introduction

Petitioner H.B. Sutherland Bank, N.A. (the Bank) brings this appeal from the Twelfth Circuit and raises two arguments. *H.B. Sutherland Bank, N.A v. Consumer Fin. Prot. Bureau*, 505 F.4th 1, 1 (12th Cir. 2022) (en banc), *cert. granted*, No.22-0096. First, the Bank alleges that its Seventh Amendment rights were violated when an administrative law judge at the Consumer Financial Protection Bureau entered judgement against the Bank for engaging in deceptive practices in violation of the Consumer Financial Protection Act. *Id.* at 2; 12 U.S.C. §§ 5531, 5536. Next, the Bank alleges that the removal protections for administrative law judges within the Consumer Financial Protection Bureau violate the separation of powers. *Sutherland Bank*, 505 F.4th at 2. Both of these arguments lack merit.

B. Statement of Facts

Following the 2008 financial crisis, approximately four million American families lost their homes to foreclosure. Fin. Crisis Inquiry Comm'n, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, xvxvi–vii (2010), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf [hereinafter Fin. Crisis Inquiry Comm'n Final Report]. Another four million fell behind on rent and mortgage payments. *Id*. Congress, recognizing that "[t]he collateral damage of this crisis ha[d] been real people and real communities[,]" *id.*, passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 11-203, 124 Stat. 1376 (2010). Through this act, Congress created the Consumer Financial Protection Bureau (the Bureau), entrusting it with the enforcement of eighteen preexisting federal consumer protection statutes and empowering it to enforce an added prohibition on unfair, deceptive, or abusive acts and practices (UDAAPs) in the consumer finance sector. *Id.*; 12 U.S.C. §§ 5531, 5536.

Sutherland Bank, which operates in this sector, takes issue with this enforcement power. *Sutherland Bank*, 505 F.4th at 2. The Bank and its subsidiaries provide retail banking, stock brokerage, insurance, and wealth management services to over eleven million customers throughout the country. *Id*. at 2–3. While providing these services, the Bank committed a plethora of consumer protection violations for which the bureau brought an enforcement action. *Id.* An administrative law judge (ALJ) heard the case, and made the following legal and factual findings. The specific facts underlying the violations are not in dispute. *Id.* at 6.

First, the Bank enrolled customers in its Account Protection Program (APP) overdraft-protection service without their consent, for which the bank charged overdraft fees in violation of the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693–1693r. *Sutherland Bank*, 505 F.4th at 6. Additionally, the Bank failed to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of information that the Bank furnished to nationwide consumer reporting services, which violated the Fair Credit Reporting Act, 15 U.S.C. §§ 1681–1681x. *Sutherland Bank*, 505 F.4th at 6.

Lastly, the Bank engaged in deceptive acts and practices both in-person and over the phone in violation of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(a), (d)(1), 5536 (a)(1)(B). The Bank made false statements and misrepresentations to its customers. *Sutherland Bank*, 505 F.4th at 6. Specifically, the Bank told customers that they were not being assessed fees on their accounts, even though the accounts were automatically enrolled in the APP service, which assesses fees. *Id.* at 5. The Bank also advertised accounts to potential buyers as having no mandatory fees, despite the automatic enrollment in the APP service. *Id.* The Bank now asserts a separation of power claim and a Seventh Amendment challenge, but it asserts the Seventh Amendment only in regards to the CFPA. It concedes that both the Fair Credit Reporting Act and

the Electronic Fund Transfer Act constitute congressionally-created public rights for which no jury right exists. *Id.*at 4, 6.

C. Procedural History

The Bureau initiated administrative proceedings against the Bank on July 6, 2019 for the above-listed consumer protection violations. *Id.* at 4. The parties proceeded to oral argument, and in early 2020, an administrative law judge (ALJ) at the Bureau issued a recommended decision against the Bank on all claims. *Id.* The Bureau's director affirmed. *Id.* at 4-5. This decision held the Bank liable for economic damages caused to consumers ($350,526.31 for the CFPA violation, $6,450,332.12 for the EFTA violation, and $1,339,036.15 for the FCRA violation), as well as for civil penalties in the amount of $4,155,500 for the CFPA violation. *Id.* Additionally, it enjoined the Bank from offering the APP services to consumers. *Id*. at 5. The Bank appealed, and a Twelfth Circuit panel affirmed the Bureau's findings. *Id.* The Bank appealed again, and the Twelfth Circuit, en banc, again rejected the Bank's arguments. The Bank then petitioned this Court for Certiorari. *Id.* Respondent Consumer Financial Protection Bureau urges this Court to affirm the findings of each of the lower courts.

DISCUSSION

I. The Consumer Financial Protection Bureau's use of an administrative judge does not violate the Seventh Amendment.

The Bureau did not violate the Bank's Seventh Amendment right by using an administrative law judge to assess fines against the Bank for engaging in unfair, deceptive, or abusive acts or practices (UDAAPs). The Seventh Amendment states that "In Suits at common law . . . the right of trial by jury shall be preserved[.]" U.S. Const. amend. VII**.** This right applies only to claims that arose in courts of law, rather than courts of equity, at the time of ratification. *Atlas Roofing Co., Inc. v. Occupational Safety & Health Rev. Comm'n*, 430 U.S. 442, 449 (1977).

However, it does not attach to all claims that traditionally fell within courts of law. *See, e.g.*, *Granfinanciera v. Nordberg*, 492 U.S. 33, 52–53 (1989). A public rights exception permits adjudication of some common law claims without a jury, namely those claims that concern a public right. *See, e.g.*, *id.* The CFPA's prohibition on UDAAPs is neither a common law claim nor analogous to one. Nevertheless, even if such an analogy existed, the public rights exception applies.

A. The UDAAP ban is not a traditional common law claims nor analogous to one.

The CFPA's prohibition on UDAAPs is neither a common law claim nor a common law analogy, thus removing it from the ambit of the Seventh Amendment. *See, e.g.*, *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 376 (1996). The Seventh Amendment only applies where the type of claim at issue is a traditional common law claim–one that was tried in a court of law at the time of the founding– or where the claim at issue is analogous to such a traditional claim. *Id.*

The prohibition on UDAAPs is not a traditional common law claim. Traditional claims include trespass, trover, detinue and replevin, ejectment, covenant, debt, general assumpsit and fraud. 8 James Wm. Moore et al., *Moore's Federal Practice* § 38.110, LexisNexis (database updated 2022). Therefore, the Seventh Amendment's applicability to the CFPA claim at issue depends on the existence of a common law analogy. *See Markman*, 517 U.S. at 376.

However, none exists. In determining "whether a statutory action is more analogous to cases tried in courts of law than in courts of equity or admiralty, [the Court] examine[s] both the nature of the statutory action and the remedy sought." *Feltner v. Columbia Pictures*, 523 U.S. 340, 348 (1998). The common law claim most similar to the UDAAP ban is fraud, but the two are not analogous. *See Sutherland Bank*, 505 F.4th at 14. Therefore, the Seventh Amendment does not apply.

1. Common law fraud's intent requirement distinguishes it from the UDAAP ban.

The lack of an intent requirement differentiates common law fraud from this CFPA claim. While an analogy need not be identical, *Tull v. United States*, 481 U.S. 412, 421 (1987), mere similarity does not suffice. *Sutherland Bank*, 505 F.4th at 14.

Unlike fraud, the UDAAP ban encapsulates non-intentional action. 12 U.S.C. § 5531(c), (d). The CFPA specifically defines unfairness and abusiveness to require no showing of intent. 12 U.S.C. § 5531(c), (d). Likewise, deception requires no intent. Consumer Prot. Bureau, CFPB Consumer Laws and Regulations: UDAAP 7 (2022), https://files.consumerfinance.gov/f/documents/cfpb_unfair-deceptive-abusive-actspractices-udaaps_procedures.pdf ("intent to deceive is not necessary for deception to exist."). In stark contrast, fraud is "the *intentional* misrepresentation of a material fact made *for the purpose* of inducing another to rely, and on which the other reasonably relies to his or her detriment." 37 Am. Jur. 2d *Fraud and Deceit* § 1, Westlaw (database updated August 2022) (emphasis added). This distinction undermines the existence of a common law analogy.

Furthermore, the canon of constitutional avoidance requires differentiating "deceptive acts and practices" from common law fraud. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 842 (2018) (citing *Crowell v. Benson,* 285 U.S. 22, 62, (1932) ("When 'a serious doubt' is raised about the constitutionality of an act of Congress, 'it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."). Here, when the UDAAPs provision is read distinctly from common law fraud, the Seventh Amendment question dissipates. *See Jennings*, 138 S.Ct. at 842; *see Markman,* 517 U.S. at 376.

2. The available relief for UDAAP violations further distinguishes deception from common law fraud.

In addition to the substantive differences between common law fraud and deception, the

relief authorized by the CFPA further distinguishes these claims. The CFPA authorizes numerous remedies, including recission or reformation of contracts, refund of moneys or return of real property, restitution, disgorgement or compensation for unjust enrichment, payment of damages or other monetary relief, public notification about the violation including cost, limits on activities, and civil monetary penalties. 12 U.S.C. § 5565(a)(2). These remedies are primarily equitable relief, including clearly equitable relief such as recission or reformation of contracts, restitution, disgorgement, public notification, and limits on activities and functions. 12 U.S.C. § 5565(a)(2); *see CIGNA Corp. v. Amara*, 563 U.S. 421, 440 (2011).

Traditionally, suits for damages or debts fell in courts of law, while suits seeking specific relief fell in courts of equity. *Plechner v. Widener Coll., Inc.*, 569 F.2d 1250, 1258 (3d Cir. 1977) (citing 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2311). While the CFPA authorizes payment of damages or other monetary relief and civil money penalties, 12 U.S.C. § 5565(a)(2), the fact that relief takes the form of a money payment does not automatically remove it from the category of traditionally equitable relief. *CIGNA Corp.*, 563 U.S. at 441. Equity courts provided relief in the form of "monetary 'compensation' for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment." *Id.* at 441–42. Courts of law, in contrast, provided "nothing other than compensatory damages[.]" *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993).

The nature of relief sought therefore turns on whether the Bureau sought any relief other than compensatory damages. *See id.* It did. The Bureau sought injunctive relief, civil penalties, and economic damages for harm caused to consumers by the Bank. *Sutherland Bank*, 505 F.4th at 4–5. This collection of relief demonstrates that the Bureau sought more than just compensatory damages. *See Mertens*, 508 U.S. at 255.

Furthermore, the civil penalties assessed by the Bureau extend beyond mere compensatory damages. "[O]ne of the most basic interpretive canons," according to this Court, is that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]" *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). As such, the civil monetary penalties authorized by the CFPA must be read distinctly from the damages or other monetary relief authorized by the same statute. *See Corley*, 556 U.S. at 314.

Construing the civil monetary penalties as act as a "surcharge" on violators for breaching their duties avoids such superfluity. *See CIGNA Corp.*, 563 U.S. at 442. The Bank, as a provider of retail banking, stock brokerage, insurance, and wealth management services to customers nationwide, has a fiduciary duty to its customers. FDIC, *Trust/Fiduciary Activities,* Banker Resource Center, https://www.fdic.gov/resources/bankers/trust-fiduciary-activities/. Historically, courts of equity imposed "surcharges" on holders of fiduciary duty that breached this duty. *CIGNA Corp*, 563 U.S. at 442. The Bureau treats these penalties as a surcharge by channeling the funds acquired into the Civil Penalty Fund, where it compensates eligible classes of harmed consumers and provides funding for consumer education and financial literacy. 12 C.F.R § 1075 (2022). The "damages" imposed by the ALJ against Sutherland essentially act as a "surcharge" against the bank for its breach of fiduciary duty to its customers and to the general public. It does not, as compensatory damages do, make the Bank's harmed customers whole.

B. Adjudication of CFPA claims fall within the public rights exception to the Seventh Amendment.

The Bank asserts that deception sounds in common law fraud, despite the lack of analogy, but the public rights exception nevertheless defeats the Seventh Amendment claim. This exception permits adjudication of common law claims without a jury when those claims fall within a

Congressionally-created public right. *See, e.g.*, *Atlas Roofing*, 430 U.S. 442. Two major factors govern the existence of a public right: if existing private remedies were inadequate prior to Congressional intervention, *see, e.g., id.*, and if the right at issue is closely integrated with a public regulatory scheme. *See, e.g.*, *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568 (1985). Both of these factors apply to the UDAAP claims.

1. Private existing remedies for harmed consumers were inadequate.

Private remedies inadequately protected consumers prior to the passage of the Dodd-Frank Act, proving the existence of a public right. *See, e.g.*, *Atlas Roofing*, 430 U.S. 442. In *Atlas Roofing*, the Court held that the adjudicative process created by the Occupational Safety and Health Act of 1970 (OSHA), 84 Stat. 1590, 29 U.S.C. § 651 et seq, did not violate the Seventh Amendment. *Atlas Roofing*, 430 U.S at 461. That act imposed a "new statutory duty to avoid maintaining unsafe or unhealthy working conditions and empower[ed] the Secretary of Labor to promulgate health and safety standards." *Id.* at 444–45. Before passing this law, Congress conducted an investigation, concluding that "work-related deaths and injuries had become a 'drastic' national problem[,]" and that the existing remedies "[were] inadequate to protect the employee population from death and injury due to unsafe working conditions[.]" *Id.* In upholding OSHA's adjudicative power over seemingly private torts, the Court concluded that "when Congress creates new statutory 'public rights,' it may assign their adjudication to an administrative agency with which a jury trial would be incompatible, without violating the Seventh Amendment's injunction that jury trial is to be 'preserved' in 'suits at common law." *Id.* at 455.

The Bureau similarly remedies a pre-existing gap in the statutory scheme. Congress created the Bureau through the Dodd-Frank Act in response to the devastating 2008 financial crisis. As it had in its enactment of OSHA, Congress conducted extensive investigations, eventually concluding that "widespread failures in financial regulation and supervision proved devastating to

the stability of the nation's financial markets[.]" Fin. Crisis Inquiry Comm'n Final Report at xviii.[1] Just as Congress created OSHA in response to inadequate worker-protections, Congress created the Bureau in response to the inadequacies of the existing consumer protection structure.

2. The UDAAP ban is closely integrated with the federal consumer protection scheme.

Furthermore, the right of consumers to be free from unfair, abusive, or deceptive acts and practices is closely integrated with a public regulatory scheme, thus falling within the public rights exception. *Thomas*, 473 U.S. 568 at 594 (finding that the public rights exception includes cases involving "a seemingly 'private' right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution[.]").

Congress entrusted the Bureau with the enforcement of eighteen preexisting consumer financial protection statutes as well as the novel prohibition on UDAAPs. 12 U.S.C. §§ 5531, 5536. The regulatory scheme established by Dodd-Frank depends upon this consolidation. The government's "inconsistent response added to the uncertainty and panic in the financial markets" during the 2008 financial crisis and the haphazard, multi-agency oversight of existing consumer protection statutes exacerbated financial panic. Fin. Crisis Inquiry Comm'n Final Report at xvii, xxi.

The Bureau's enforcement data examples the practical integration of the UDAAP ban within the broader consumer protection scheme. CFPB, Enforcement Actions, https://www.consumerfinance.gov/enforcement/actions/. Every single case brought by the Bureau in 2022 alleged violations of the CFPA, usually alongside another consumer protection statute. *Id.* Seventeen of

[1] In 2009 Congress created the Financial Crisis Inquiry Commission as part of the Fraud Enforcement and Recovery Act. to "examine the causes, domestic and global, of the current financial and economic crisis in the United States." Fraud Enforcement and Recovery Act, Pub. L. No. 111-21, § 5. The commission detailed its findings in the *Financial Crisis Inquiry Report.*

those twenty enforcement actions asserted UDAAPs, and only two cases involved stand-alone allegations of deceit. *Id.* In nearly every case brought by the Bureau for deceitful actions, the Bureau simultaneously enforced at least one other statute in conjunction with the CFPA. *Id.*

***

In conclusion, the Bureau's use of an ALJ to resolve UDAAP claims under the CFPA did not violate the Seventh Amendment. *See Markman*, 517 U.S. at 376. The CFPA ban on UDAAPs is not a traditional common law claim, and it lacks a common law analogy because the UDAAP ban does not contain an element of intent. *See id.*; 8 James Wm. Moore et al., *Moore's Federal Practice* § 38.110. Furthermore, the public rights exception renders the question of a common law analogy moot, because when it passed the CFPA ban on UDAAPs, Congress created a public right. 12 U.S.C. §§ 5531, 5536; *see Atlas Roofing*, 430 U.S. 442. For these reasons, the Bank's Seventh Amendment claim must fail.

II. The Bureau's dual-layer removal scheme for ALJs does not violate the separation of powers.

The Bank's separation of powers claim, too, must fail, because the dual-layer removal scheme for ALJs within the Bureau does not restrict the President's ability to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3; *See Humphrey's Ex'r v. U.S.*, 295 U.S. 602 (1935). ALJs within the Bureau and members of the Merit Systems Protection Board (the Board) are non-executive officers whose activities do not unduly interfere with the President's oversight power. *See Humphrey's Ex'r*, 295 U.S. 602.

By statute, administrative law judges receive removal protections through a two-layer scheme. 5 C.F.R. § 930.211 (2022); 5 U.S.C. § 1201 et seq. Removal of ALJs requires good cause, as determined by the Board, "after opportunity for a hearing[,]" 5 U.S.C. § 7521(a); 5 C.F.R. § 930.211 (2022), and the removal of Board members by the President requires "inefficiency,

neglect of duty, or malfeasance in office." 5 U.S.C. § 1202(d). The character and scope of duty of both the Board and Bureau ALJs permit this dual-layer protection scheme.

The ability of Congress to impose heighted removal protections depends in part "upon the character of the office." *Morrison v. Olson*, 487 U.S. 654, 687 (1988) (citing *Humphrey's Ex'r*, 295 U.S. at 631, 655); *see, e.g.*, *Free Enterprise Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 514 (2010) (invalidating a dual layer scheme when each layer involved wielded "significant executive power[.]"). Neither layer of officials involved in this removal process exercise significant executive power, rendering removal protections proper.

A. ALJs are non-executive, quasi-judicial officials.

The character of Administrative Law Judges authorizes removal protections. *See Morrison*, 487 U.S. at 687. ALJs are inferior officers, *Lucia v. SEC*, 138 S.Ct. 2044 (2018), who exercise quasi-judicial, non-executive power. Each of these characteristics independently permits heighted removal protections for ALJs. *See Morrison*, 487 U.S. at 691.

First, the position of ALJs as inferior officers within the executive branch warrants removal protections. The President does not wield unfettered power to freely remove inferior officers, particularly where the officers' discretion is not "central to the functioning of the Executive Branch[.]" *Id.* at 691–92. In *Morrison*, the Court approved removal protections for an inferior officer within the executive branch. *Id*. at 671. In doing so, the Court clarified factors that distinguish an "inferior" officer from a "principal," *id.*, which the Court later used to determine that ALJs are inferior officers. *Lucia v. SEC*, 138 S.Ct. at 2049.

In *Morrison*, the Court evaluated the removal protections within the Ethics in Government Act. 28 U.S.C. §§ 591–599 (1982 ed., Supp. V). The act "allow[ed] for the appointment of an 'independent counsel' to investigate and, if appropriate, prosecute certain high-ranking Government officials for violations of federal criminal laws" and provided that the independent

counsel could only be removed from office by Congressional impeachment or by the Attorney General for "good cause, physical disability, mental incapacity, or any other condition that substantially impair[ed] the performance of such independent counsel's duties." *Morrison*, 487 U.S. at 660, 663. The Court found that "[a]lthough the counsel exercise[d] no small amount of discretion and judgment in deciding how to carry out his or her duties under the Act," the Court "simply d[id] not see how the President's need to control the exercise of that discretion [wa]s so central to the functioning of the Executive Branch as to require as a matter of constitutional law that the counsel be terminable at will by the President." *Id.* at 691–2.

Secondly, ALJs are not purely executive officers, so the President's need to control the exercise of ALJ discretion is not "so central to the functioning of the Executive Branch," *id.*, as to require at-will ALJ termination. ALJs lack the power to issue final decisions; they may only issue recommended decisions to the Director of the Bureau, 12 C.F.R. § 1081.400 (2022), who is removable at will by the President. *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S.Ct. 2183 (2020). As such, ALJs possess "purely recommendatory power," opposed to the "enforcement or policy making functions" wielded by other members of the executive branch. *Free Enterprise Fund*, 561 US at 507 n.10. The President remains free to, through his Bureau director, alter ALJ decisions and exercise sufficient control over the executive branch. *Compare Sutherland Bank*, 505 F.4th 1 (noting that the Bureau director may set aside any findings or conclusions of an ALJ) *with Bowsher v. Synar*, 478 U.S. 714, 733 (1986) (invalidating a removal restriction when the executive officer "command[ed] the President himself to carry out" the officer's order "without the slightest variation[.]").

B. The Merit Systems Protection Board does not exercise executive power.

The second layer of the dual-layer scheme concerns the Merit Systems Protection Board. Although members of the Board are principal, rather than inferior officers,[2] *see Edmond v. United States*, 520 U.S. 651, 663 (1997), "Congress can, under certain circumstances, create independent agencies run by principal officers appointed by the President, whom the President may not remove at will but only for good cause." *See Free Enterprise Fund*, 561 U.S. at 843. Specifically, the Court permits this type of removal protection where the principal officers serve as members of a nonpartisan, independent, and non-executive body with staggered terms, created by Congress to "carry into effect legislative policies." *Humphrey's Ex'r*, 295 U.S. at 628. In these circumstances, the Court allows limiting removal to reasons of "inefficiency, neglect of duty, or malfeasance in office[.]" *Id.* at 624. These are the same reasons for which the President may remove Board members. 5 U.S.C. § 1202(d).

In addition to sharing the same removal standards, the Board shares each of the characteristics highlighted by the Court; the Board is also a nonpartisan, independent, and non-executive body with staggered terms that was created by Congress to "carry into effect legislative policies." *See* 5 U.S.C. § 1201. As such, the Constitution permits these removal protections. *See Humphrey's Ex'r*, 295 U.S. at 628.

1. The Board was created to carry into effect legislative policies and adjudicate claims.

The Constitution permits these removal protections because Congress created the Board to carry into effect legislative policies, namely the Merit Systems Principles. 5 U.S.C. § 2301(b); 5 C.F.R. 1200.1. The *Humphrey's Executor* Court reasoned that

[2] "'[I]nferior officers' are officers whose work is directed and supervised at some level by others who were appointed by Presidential nomination with the Senate's advice and consent."

> [t]he Federal Trade Commission[,] [a]s an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed, and to perform other specified duties as a legislative or as a judicial aid . . . cannot in any proper sense be characterized as an arm or an eye of the executive.

Humphrey's Ex'r, 295 U.S. at 628. The Board, too, carries legislative policies into effect. Congress created the Board in 1978 to "ensure that all Federal government agencies follow Federal merit systems practices." 5 C.F.R. 1200.1.

Furthermore, the Board's primary adjudicatory role places it outside the executive. *See Wiener v. U.S.*, 357 U.S. 349, 356 (1958). The Board "is an independent Government agency that operates like a court" and "adjudicates individual employee appeals and conducts merit system studies." *About MSPB*, U.S. Merit Systems Protection Board, https://www.mspb.gov/about/about.htm.

The Constitution does not directly confer Presidential removal power over "a member of an adjudicatory body . . . merely because [the President] want[s] his own appointees on such a Commission[.]" *Wiener*, 357 U.S. at 356. The ability of a body to hear claims and issue final decisions that are not subject to review by any other official or court indicates adjudicatory power. *See id.* at 354–55. Likewise, the Board hears and adjudicates claims over which it exercises the power of final decision, 5 U.S.C.A. § 1204 (a)(1), and therefore "cannot in any proper sense be characterized as an arm or an eye of the executive." *Humphrey's Ex'r*, 295 U.S. at 628; *see Wiener*, 357 U.S. at 354–55.

2. Congress intended the Board to be a non-partisan, independent commission.

Furthermore, Congress intended the Board to be a non-partisan, independent commission, which takes the Board outside of the President's direct control. *See Humphrey's Ex'r*, 295 U.S. at 629 (finding that Congress possesses the constitutional authority to create "quasi legislative or

quasi judicial agencies, [and] to require them to act in discharge of their duties independently of executive control[.]"). Some agencies conduct tasks that "require absolute freedom from Executive interference," *Wiener*, 357 U.S. at 353, because "one who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will." *Id.* To determine the necessity of freedom from the Executive, the Court considers the nature of the function that Congress vested in the agency at issue. *Id.*

The appointment process for Board members demonstrates that Congress intended independence. 5 U.S.C. §§ 1201–02; *see Humphrey's Ex'r*, 295 U.S. at 624. In *Humphrey's Executor*, the Court upehld for cause removal protections of FTC commissioners because Congress intended the commission to be independent. *Humphrey's Ex'r*, 295 U.S. at 624. The Court reasoned that Congress composed the FTC of commissioners serving seven-year staggered terms, " so arranged that the membership would not be subject to complete change at any one time[.]" *Id.* Likewise, members of the Board serve seven-year staggered terms. *See* 5 U.S.C. §§ 1201–02; 5 C.F.R. § 1200.2. As the President serves a term of four years, U.S. Const. art. II, § 1, no President can appoint his own Board majority in a given term, demonstrating Congress's intent that the Board would not be subject to complete change by any one President. 5 C.F.R. § 1200.2; *see Humphrey's Ex'r*, 295 U.S. at 624.

At-will removal of Board members would erode this independence. *Cf Morrison*, 487 U.S. at 687–88 ("Were the President to have the power to remove FTC Commissioners at will, the 'coercive influence' of the removal power would 'threate[n] the independence of [the] commission.'"). Because the Board wields jurisdiction over various subjects that could put the Board at odds with the President, *see, e.g.*, 5 C.F.R. § 1200.10 (2022), removal protections safeguard the Board from conflicts of interest, notably in cases concerning the President's

executive officers or political allies. *See Wiener*, 357 U.S. at 353. For example, the Board has original jurisdiction over alleged violations of the Hatch Act, which prohibits federal employees from using their official authority or influence to affect the outcome of an election. 5 C.F.R. § 1201.121 (2022); 5 U.S.C. § 7323. As the President is an elected official and political leader, these types of claims could create conflict between the President and the Board.[3] Consider a civil servant who inappropriately campaigns for the President's re-election. The President, under the Bank's proposed at-will removal power, could simply dismiss the Board members who would sanction his supporter, putting pressure on the Board to obey the President's wishes instead of the Merit Systems Principles. *See Wiener*, 357 U.S. at 353. Congress structured the Board as to insulate it from such undue influence, and therefore, the Constitution permits heightened removal protections. *See Morrison*, 487 U.S. at 687–88

C. The removal process remains exclusively in the Executive Branch.

Additionally, the Constitution permits this dual-layer removal process because the removal power remains within the Executive Branch. *See Morrison*, 487 U.S. at 686. In *Bowsher*, the Court invalidated an act which made an executive officer "removable not by the President but only by a joint resolution of Congress or by impeachment[.]"478 U.S. at 728. Similarly, in *Myers*, the Court invalidated a removal scheme requiring the Senate to consent to removal. *Myers v. United States.*, 272 U.S. 52, 106, 176 (1926). Conversely, the removal scheme at issue in *Morrison* "put[] the removal power squarely in the hands of the Executive Branch; an independent counsel [could] be

[3] Hatch Act allegations typically begin in the Office of Special Counsel, which diverts the official accused of violating the act to the Board for proceedings, unless that official was nominated by the President and confirmed by the Senate. 5 U.S.C. 1215. Upon a finding by the Office of Special Counsel that an official who was appointed by the President and confirmed by the Senate violated the Hatch Act, the office refers them not to the Board, but rather to the President. 5 U.S.C. 1215(b).

removed from office, 'only by the personal action of the Attorney General, and only for good cause." *Morrison*, 487 U.S at 686. For this reason, the Court upheld the *Morrison* scheme. *Id.*

Likewise, in creating the Bureau, Congress kept the removal process for ALJs in the Bureau "squarely in the hands of the Executive Branch" under the Merit Systems Protection Board. *Id.*; 5 U.S.C. § 7521(a). The removal process for Board members also remains in the hands of the Executive Branch, as only the President may remove them for the enumerated reasons. 5 U.S.C. § 1202(d). As such, the Constitution permits this removal process.

***

For each of these reasons, the dual-layer removal scheme does not violate the separation of powers as it applies to officers that wield no executive power. ALJs are quasi-judicial, inferior officers, and because the Bureau director, whom the President may remove at-will, may unilaterally reverse ALJ decisions, the President remains free to "take care" that the law be faithfully executed. 12 C.F.R. § 1081.400 (2022); *Seila L. LLC,* 140 S.Ct. 2183. The Board, too, is non-executive. It is a quasi-judicial body that operates like a court in order to "carry into effect" the Merit Systems Principles. *See* 5 U.S.C. § 2301(b); 5 C.F.R. 1200.1. For each of these reasons, the Bank's separation of powers claim must also fail.

III. Conclusion

The 2008 financial crisis did not only cost Americans millions of dollars— it harmed "real people and real communities." Fin. Crisis Inquiry Comm'n Final Report at xvxvi–vii. In an effort to safeguard the American public from further harm, Congress enacted the ban on unfair, deceptive, or abusive acts and practices. The Bank nevertheless deceived American consumers, and now attempts to escape accountability, unconcerned about the damage it leaves in its wake. The Consumer Financial Protection Bureau urges this Court to affirm.

Applicant Details

First Name	**Catherine**
Middle Initial	**N**
Last Name	**Sherman**
Citizenship Status	**U. S. Citizen**
Email Address	**cns57@georgetown.edu**
Address	**Address** Street **150 Q St. NE Apt. 1321** City **Washington** State/Territory **District of Columbia** Zip **20002** Country **United States**
Contact Phone Number	**4408216738**

Applicant Education

BA/BS From	**University of Virginia**
Date of BA/BS	**May 2019**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**June 5, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**American Criminal Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Luban, David
luband@georgetown.edu
3013355506
Hopwood, Shon
srh90@georgetown.edu
Gottesman, Michael
gottesma@law.georgetown.edu
202-662-9482

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Catherine Sherman
150 Q St. NE, Apt. 1321, Washington, D.C. 20002 | (440)-821-6738 | cns57@georgetown.edu

June 11, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

I am a rising third-year law student in the top ten percent of my class at Georgetown University Law Center, and I am writing to apply for a 2024-2025 term clerkship in your chambers. I intend to live and practice law in Virginia long-term, so I would be thrilled to serve the Eastern District of Virginia as your clerk.

As an aspiring prosecutor, I would welcome the opportunity to learn from you, given the knowledge and perspective you gained from your experience as a federal prosecutor. I have thoroughly enjoyed my experiences working with two prosecutors' offices because I enjoy working to pursue justice on behalf of the community. I have also learned quickly in those dynamic environments, researching and analyzing a wide range of legal issues from evidentiary issues to substantive legal issues regarding various crimes. Beyond my experiences working for prosecutors' offices, my other professional and academic experiences have allowed me to hone my analytical and writing skills. As a student at Georgetown Law, I am a Managing Editor of the *American Criminal Law Review*, which has elevated my writing and editing skills. I have thrived in this challenging role because of my attention to detail, strong work ethic, and excitement about contributing to legal scholarship. This past spring, I was a judicial intern for Judge Carl Nichols on the U.S. District Court for D.C., where I refined my writing skills, drafting opinions and memoranda. These experiences, and my enjoyment of legal writing, have led me to become a skilled and analytical writer, who would excel as a clerk in your chambers.

My resume, writing sample, transcript, and letters of recommendation are submitted with this application, and I am happy to provide any other information or materials. Thank you for your time and consideration.

Sincerely,
Catherine Sherman

Catherine Sherman

150 Q St. NE, Apt. 1321, Washington, D.C. 20002 | (440)-821-6738 | cns57@georgetown.edu

EDUCATION

Georgetown University Law Center Washington, D.C.
Juris Doctor Expected June 2024

- GPA: 3.9/4.0
- Honors and Awards: Top 10%; Dean's List
- Activities: Volume 61 Managing Editor, *American Criminal Law Review*; Vice President of Prosecution Programming, Georgetown Criminal Law Association

University of Virginia Charlottesville, VA
Bachelor of Arts in Economics with Distinction May 2019

- GPA: 3.73/4.0
- Honors and Awards: Dean's List for 5 of 7 eligible semesters (semester abroad was not eligible for Dean's List)
- Study Abroad: Law and Criminology Program at Vrije Universiteit Amsterdam, January 2018 – June 2018

PROFESSIONAL EXPERIENCE

United States Attorney's Office for the Northern District of California San Francisco, CA
Law Clerk June 2023 – present

- Support Assistant U.S. Attorneys in the Criminal Division by conducting legal research and analyzing legal issues for ongoing cases
- Drafted memorandum, which was used to write a prosecution memorandum, summarizing the factual background and analyzing whether the elements of the crime were satisfied for a felon in possession case

United States District Court for the District of Columbia, Judge Carl J. Nichols Washington, D.C.
Intern January 2023 – April 2023

- Drafted two opinions: one regarding a motion for attorney's fees under the Equal Access to Justice Act and another regarding a motion to dismiss for lack of personal jurisdiction
- Wrote several memoranda analyzing pre-trial motions in criminal prosecutions of defendants charged with crimes related to the events of January 6, 2021
- Wrote a memorandum providing an outline for an opinion on a motion to dismiss for a disability discrimination case involving claim preclusion and preclusion by a workers' compensation statute

Office of the Commonwealth's Attorney for Arlington County and the City of Falls Church Arlington, VA
Intern June 2022 – August 2022

- Researched various legal issues, such as the right to retain counsel, subject matter jurisdiction, and examining a hostile witness, and summarized research findings in memoranda for Assistant Commonwealth's Attorneys
- Helped write motions by adding legal reasoning and case law to support supervising attorney's arguments
- Collected evidence by reviewing interrogation videos in preparation for a murder trial
- Researched rehabilitation strategies for batterers in support of plea negotiations with defendant

Bates White Washington, D.C.
Consultant II September 2020 – July 2021

- Worked with teams to support parties to ligation or involved in federal merger review process
- Produced client deliverables, including memoranda, white papers, and presentations, explaining the results of team's data analysis and research in antitrust and product liability cases
- Conducted document review and analysis of over 1,000 articles detailing judgments in asbestos cases
- Managed team of three to create a database for analysis of outcomes in asbestos cases

Consultant I September 2019 – August 2020

- Drafted language for white papers on competitive effects of $17B merger for end client
- Owned responsibility for data processing and analysis and document review for one of the two main lines of business in merger case, producing results which were critical for our communications with DOJ
- Managed two Consultants; created workplans, guided execution of tasks, and reviewed work

Summer Consultant June 2018 – August 2018

- Collaborated with team of 20 to produce an expert report for Apple Inc. in *Apple Inc. v. Qualcomm Inc.*, a lawsuit regarding monopolization and intellectual property in the technology industry

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Catherine Nicole Sherman
GUID: 828096822

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	001	95	Civil Procedure David Vladeck	4.00	B+	13.32	
LAWJ	002	51	Contracts Michael Diamond	4.00	A	16.00	
LAWJ	003	51	Criminal Justice Michael Gottesman	4.00	A	16.00	
LAWJ	005	51	Legal Practice: Writing and Analysis Frances DeLaurentis	2.00	IP	0.00	

	EHrs	QHrs	QPts	GPA
Current	12.00	12.00	45.32	3.78
Cumulative	12.00	12.00	45.32	3.78

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	004	95	Constitutional Law I: The Federal System Paul Smith	3.00	A	12.00	
LAWJ	005	51	Legal Practice: Writing and Analysis Frances DeLaurentis	4.00	A	16.00	
LAWJ	007	95	Property John Byrne	4.00	A	16.00	
LAWJ	008	95	Torts Kevin Tobia	4.00	A	16.00	
LAWJ	790	50	Criminal Law Across Borders David Luban	3.00	A	12.00	

Dean's List 2021-2022

	EHrs	QHrs	QPts	GPA
Current	18.00	18.00	72.00	4.00
Annual	30.00	30.00	117.32	3.91
Cumulative	30.00	30.00	117.32	3.91

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	126	05	Criminal Law Paul Butler	3.00	A	12.00	
LAWJ	1493	05	Prison Law and Policy Shon Hopwood	3.00	A	12.00	
LAWJ	165	02	Evidence Michael Pardo	4.00	A	16.00	
LAWJ	215	09	Constitutional Law II: Individual Rights and Liberties Randy Barnett	4.00	A	16.00	

	EHrs	QHrs	QPts	GPA
Current	14.00	14.00	56.00	4.00
Cumulative	44.00	44.00	173.32	3.94

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	134	05	Decedents' Estates Thomas Hardiman	4.00	B+	13.32	
LAWJ	1491	10	Externships I Seminar (J.D. Externship Program)		NG		
LAWJ	1491	86	~Seminar	1.00	A	4.00	
LAWJ	1491	88	~Fieldwork 3cr	3.00	P	0.00	
LAWJ	1538	05	Constitutional Law: The First and Second Amendments	1.00	P	0.00	
LAWJ	1652	05	Criminal Justice II: Criminal Trials	3.00	A	12.00	
LAWJ	361	03	Professional Responsibility	2.00	A	8.00	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	14.00	10.00	37.32	3.73
Annual	28.00	24.00	93.32	3.89
Cumulative	58.00	54.00	210.64	3.90

End of Juris Doctor Record

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

My former student Catherine Sherman has applied for a clerkship in your chambers, and has asked me to provide a recommendation. It's a pleasure to do so, because she is an outstanding student who I believe will be equally outstanding as a law clerk.

Catherine took my 1L elective class "Criminal Law Across Borders" in spring 2022. Its subject matter combines the application of federal criminal law to extraterritorial conduct, and international criminal law—the law of war crimes, crimes against humanity, and genocide. The course provides students with an introduction to international law, to basic criminal law, and the interpretation of treaties and federal statutes. At Georgetown, students take criminal procedure rather than substantive criminal law in their 1L year, so for many of them my course is their first exposure to concepts of actus reus and mens rea, elements analysis, sentencing policy, and criminal defenses. On the international law side, we spend a lot of time on jurisdiction, as well as the basics of customary and treaty law and their role in our constitutional system.

Catherine was a standout: she wrote the best exam out of 45 students in the class. Her performance is consistent with her other grades: I see from her transcript that apart from a single B+ in her first semester, she has been a straight-A student through her first three semesters of law school. That places her near the top of a very strong student cohort. The writing sample she showed me—a brief she wrote for her Legal Practice course—confirms that she is a strong, clear writer with excellent analytical skills.

Catherine tells me that she has been interested in criminal justice issues since she was in middle school, but it wasn't until a college course on civil rights and the Constitution that she realized that she wants to pursue justice as a prosecutor—which remains her ambition as she goes into her final year in law school. This past summer, interning at the Arlington, Virginia Commonwealth Attorney's Office, she worked on structuring a plea deal for a young defendant who had committed violence against an intimate partner. She researched rehabilitation programs and studied the social science of rehabilitation—at the direction of her supervisor—in an effort to avoid sending the offender to prison without any support. Catherine wrote me that "it was so encouraging to work with a prosecutor who was searching for the just outcome, not the easy or obvious one. This is the kind of prosecutor I want to be: a prosecutor who treats all parties with dignity and seeks to resolve the root causes of crime." I know many law students interested in criminal justice reform, but almost none who see themselves as prosecutors rather than defenders. I really appreciate this in Catherine, because it shows a laudable independence of mind and a thoughtful understanding of the prosecutor's role.

From talking with Catherine both in and out of class, I believe that she is mature and responsible. I have no doubt that she would work well in your chambers, and she has my very strong recommendation. I would be happy to answer any questions you might have.

Yours very truly,

David Luban
Distinguished University Professor
Georgetown University Law Center

David Luban - luband@georgetown.edu - 3013355506

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter with enthusiastic support for Catherine Sherman, who is applying for a clerkship in your chambers. I write to share my experiences as her professor, and why she has demonstrated that she would be a great fit for a clerkship.

As her resume and transcript demonstrate, Catherine is committed to achieving academic excellence during her time in law school. She graduated with distinction from the University of Virginia, and she has one of the highest GPA's for her class at Georgetown Law. She has also received many academic honors, including being on the Dean's List. She has provided outstanding research and editing assistance, and I've learned to count on her to be diligent and conscientious.

Catherine already has significant and varied legal experience. Prior to law school, she worked for a litigation firm. Catherine has also shown a strong commitment to public interest work through interning for a prosecutor's office in Virginia and for a federal district court judge here in Washington DC. She continues to be an editor for the American Criminal Law Review.

From my conversations with Catherine and her participation in my classes, it is clear that she aspires to use her legal education to help others and to bridge the gap in access to justice. She has a sincere desire to understand how the law impacts the real world and to use the law as a tool to effect change beyond the classroom. She is a delight to be around, and I have no doubt that she will excel in a clerkship setting.

If you need any additional information, please do not hesitate to contact me.

Sincerely,

Shon Hopwood

Shon Hopwood - srh90@georgetown.edu

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Catherine Sherman is one of the most impressive students in Georgetown's Class of 2024. And her strengths are precisely those that would make her a superb judicial law clerk.

Catherine has been a student in two of my courses: Criminal Justice I (Criminal Investigations) in her first year, and Criminal Justice II (Criminal Trials) in her second. She has been a superstar in each. An active participant in class discussions, she has repeatedly demonstrated a capacity to extract every nuance from the decisions we've read, to recount with remarkable precision the precise holdings and what was merely dictum, and to project this information with great agility to the resolution of unsettled legal issues. She also has an exceptional ability to master complex statutes. (I've reserved to the end of this letter a description of her most recent performance, which typifies her extraordinary analytical reasoning and precision, so as not to interrupt the flow.)

Catherine's final exam in my Criminal Justice I course was superbly written and beautifully reasoned, and came within a hair's breadth of capturing the one A+ we're allowed to award. I've just completed grading my /Criminal Justice II exams, and once again Catherine scored well above the number needed for an A. This wasn't just an A, it was one of the highest A's in the class.

My assessment of Catherine's capacities is plainly shared by my colleagues. She has a 3.94 GPA after three semesters, having scored an A grade in 11 of the 12 courses (the lone exception was in her first semester). Her resume recites that she is in the top 10% of the class, but she clearly stands much higher than that. The law school doesn't give students their precise standing, but instead provides only the GPA cutoff for being in the top 10%, which was 3.85. Catherine 3.94 is so far above that; it must surely be in the top 5% and quite likely higher than that.

Catherine is dedicated to a career as a prosecutor. She is managing editor of our criminal law journal. The just-completed Criminal Justice II class in which she starred is an elective, and virtually all the 70 students in the class are dedicated to careers as either prosecutors or public defenders. Among these were many of the top students in the law school, yet Catherine clearly stood out.

I've gotten to know Catherine rather well not only from her performance in class, but also in after-class discussions and during office hours. She is friendly and has a lovely, low-key personality. I'm certain she'd be a joy to work with for all in chambers.

And now, as promised, the most recent example of Catherine's attention to detail and analytical strengths. We spent the last two weeks of the Criminal Justice II course on habeas, and I had the students dig deeply into the text of the federal habeas statutes (28 U.S.C. §§ 2241-44, 2254-55). One day was devoted to *Jones v Hendrix*, still pending decision at this writing, in which the Supreme Court will decide whether a prisoner who has previously filed a motion under 2255 can file a habeas petition to contest his conviction in light of the *Rehaif* decision. The defendant had been convicted of felony gun possession, with the judge not instructing the jury that knowledge of felony status was an element of the crime, indeed with the judge not permitting the defendant to introduce evidence of his lack of knowledge. 2255(h) states that a second motion under 2225 is allowable only if there is new evidence or if a new rule of (substantive) constitutional law has been announced by the Supreme Court. Conspicuously absent is any reference to a new rule of statutory interpretation. The defendant is contending that he should be allowed to file a true habeas petition, by virtue of the "savings" clause in 2225(e) allowing resort to habeas if "the remedy by motion is inadequate or ineffective to test the legality of his detention."

In advance of class, I provided the students portions of the briefs on both sides – which deployed innumerable interpretative arguments in support of their respective positions. In class, I called upon Catherine, and asked her first to describe the arguments on each side. She proceeded to do so, without reference to notes, and identified with total accuracy every single argument made by each side. I then asked her to state which side should prevail. She opined that the argument against allowing resort to habeas seemed stronger if one employs the traditional tools of statutory interpretation, but noted that this would mean that a person who might be innocent (because he didn't know he had previously been convicted of a felony) might remain in prison without ever having a chance to show that one of the necessary elements of the crime was missing, and without a jury ever having passed on the existence of that element. (He had been denied that chance at trial, and the jury that convicted him had not been instructed that it needed to make a finding on this element.) Catherine wondered whether 2255 might be an unconstitutional suspension of habeas if so construed, and whether accordingly the Court might give the less obvious interpretation of 2255 when the defendant has a colorable claim of innocence.

This was a stunning performance, not the least because it came during the last week of classes and just a few days before exams were to begin, a time when most students' attention to detail falls below their usual standard. And this was not a unique

Michael Gottesman - gottesma@law.georgetown.edu - 202-662-9482

experience for Catherine; it was simply the last in a series of similar presentations during the semester.

In sum, Catherine would be a perfect judicial law clerk. She has great analytic ability, she is a stickler for detail, she writes beautifully, and she has a winning personality, I've taught roughly 200 of the students in Georgetown's Class of 2024. There is only one other I would deem on par with Catherine.

Sincerely,

Michael Gottesman
Reynolds Family Endowed Service Professor

Michael Gottesman - gottesma@law.georgetown.edu - 202-662-9482

Catherine Sherman
150 Q St. NE, Apt. 1321, Washington, D.C. 20002 | (440)-821-6738 | cns57@georgetown.edu

Writing Sample

The following writing sample is a brief I wrote for my Legal Practice course in April 2022. I was instructed to write a brief on behalf of the defendant, Warden Herman Carter, requesting the United States District Court for the Eastern District of Arkansas grant his motion for summary judgment. The issue in this case is whether Warden Carter violated a prisoner's constitutional rights when he denied the prisoner access to six sports magazines. This brief is my own work and has not been edited by anyone other than me.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

Mark Webster,

Plaintiff,

Civil Action No. 22-123

v.

Herman Carter,

Defendant.

BRIEF OF DEFENDANT HERMAN CARTER IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

DATED: June 11, 2023

COUNSEL FOR Herman Carter

Introduction

Warden Herman Carter's decision to withhold six sports magazines from prisoner Mark Webster during the NCAA tournament was not a violation of Webster's First Amendment rights under *Turner v. Safley*, 482 U.S. 78 (1987). Withholding the magazines was rationally related to security, a legitimate and neutral governmental interest, because Carter reasonably concluded that withholding the magazines would reduce the risk of unrest, as competition over the NFL playoffs had recently caused unrest among prisoners. Webster had alternative means to exercise his right to access information about sports, including T.V., magazines, and newspapers. Allowing Webster to access the magazines would have a significant ripple effect on the prison, as the magazines would be easily disseminated and would have a disruptive and disorderly effect on the prison. Finally, there are no alternative regulations that would pose a de minimis cost to the prison, as page-by-page censorship and maintaining different policies across different dorms both require additional resources and would risk greater harm than withholding the magazines. For these reasons, Carter asks the court to grant his motion for summary judgment.

Statement of Facts

Langly Correctional Facility ("LCF") is an Arkansas state prison with two units: the Central Unit has maximum and medium security facilities, and the East Unit has a minimum security facility, consisting of five dorms. R.6.

In January and February 2022, during the NFL playoffs, LCF experienced an increase in prisoner disputes, including two physical altercations, as well as a decrease in prisoner productivity. R.8. Prison staff believed the unrest was caused by unhealthy competition over the NFL playoffs. R.8. Prisoners organized groups supporting different teams, particularly in East Dorms R and T, but there was no unrest in East Dorm S. R.8, 13. Prisoners also shared sports

publications, gambled on NFL games, and refused to work with prisoners who supported opposing teams. R.8.

To reduce unrest, distractions, and the number of publications circulating among prisoners during the NCAA playoffs, March Madness, LCF's Warden Herman Carter ordered prison staff to withhold the February, March, and April issues of sports publications from prisoners. R.8-9. Carter also ordered that magazines containing extensive coverage of March Madness be removed from the Dayrooms, LCF's recreational rooms. R.9. These magazines also contained blank championship brackets, which prisoners could use to bet on games and to form unsanctioned tournament pools. R.9.

Newspapers, T.V., including local sports news, and sports magazines that were not intensely focused on March Madness remained available in the Dayrooms. R.9. There are sports sections and some brackets in the newspapers, but the limited availability led Carter to believe the brackets could not be used for a tournament pool. R.9, 14. Carter also did not want to deprive prisoners of all newspapers. R.9.

Under Carter's policy, three issues of both *Sports Illustrated* and *CollegeJam* were withheld from prisoner Mark Webster. R.13. Webster receives these publications monthly and had never been denied another issue of the publications. R.7-8.

Webster is serving a thirty-month sentence for a drug offense. R.12. He is housed in East Dorm S, which houses ninety-six nonviolent prisoners with the lowest level of security needs. R.7. Prisoners in this dorm have access to T.V. in the Dayrooms and can purchase a T.V. from the prison canteen for their bunks, which Webster had done. R.7, 12.

After Webster learned that the magazines were being withheld, he appealed the decision. R.8. Webster argued that the magazines did not threaten security and told Carter that the March

2022 issue of *CollegeJam* had a feature on Longview College, where Webster's brother plays basketball, that included photos and an interview of Webster's brother. R.9, 13. Newspapers, national publications, and local T.V. generally do not include coverage of Longview. R.12-14. Webster suggested that the prison cut out the feature from the issue and provide it to him, but Carter rejected this proposal. R.9. Though Webster had not caused unrest during the NFL playoffs, Carter concluded that making an exception for Webster would anger other prisoners and that LCF did not have enough prison staff to cut out specific articles for all prisoners upon request. R.9. Carter denied Webster's appeal. R.9.

Webster filed a complaint with the United States District Court for the Eastern District of Arkansas alleging that withholding the sports publications violated his First Amendment rights. R.14. On March 31, 2022, Carter moved for summary judgment. R.5.

Argument

I. WITHHOLDING THE MAGAZINES FROM WEBSTER WAS REASONABLE UNDER THE *TURNER* TEST.

When prison regulations impinge on a prisoner's constitutional rights, the court applies the four-factor balancing test from *Turner*. 482 U.S. at 89. The court considers (1) whether the regulation is rationally related to a legitimate and neutral governmental interest, (2) whether there are alternative means for the prisoner to exercise the asserted right, (3) the impact that accommodating the asserted right will have on the prison, and (4) whether there are alternative regulations that would fully accommodate the prisoner's right at a de minimis cost to the prison. *Thornburgh v. Abbott*, 490 U.S. 401, 414, 417-18 (1989).

A. Withholding the Magazines is Rationally Related to Security, a Legitimate and Neutral Governmental Interest, Because Carter Reasonably Concluded that the Magazines Were Likely to Cause Unrest.

To satisfy the first prong of the *Turner* test, prison security must be a legitimate and neutral governmental interest, and there must be a rational connection between denying the magazines and prison security. *See id.* at 414.

1. Security is a legitimate governmental interest.

Webster was denied access to the magazines due to security, a legitimate governmental interest. When a prison's objective is to exercise a valid function of the correctional system, the objective is legitimate. *See Pell v. Procunier*, 417 U.S. 817, 822-23 (1974). Ensuring prison security must be a valid function of the correctional system because it is essential to the operation of the correctional system. Furthermore, courts have repeatedly held that security is a legitimate governmental interest. *Thornburgh*, 490 U.S. at 415; *Murphy v. Missouri Dep't of Corr.*, 372 F.3d 979, 983 (8th Cir. 2004) ("security is the most compelling government interest"). Therefore, security is a legitimate governmental interest.

2. Security is a neutral governmental interest.

Security is a neutral governmental interest. A governmental interest is neutral when it is "unrelated to the suppression of expression." *Thornburgh*, 490 U.S. at 415. As evidence of the interest's neutrality, the court also asks whether the regulation is neutral in operation. *Id.* When a prison differentiates between publications based on their potential impact on prison security, the regulation is neutral. *Id.* at 415-16. Security is a matter of safety and order, not of suppressing expression. Courts have consistently found security to be a neutral interest. *See id.*; *Dawson v. Scurr*, 986 F.2d 257, 260-61 (8th Cir. 1993). The denial of the magazines was also neutral in operation. The magazines were identified as posing a risk to security because the content was

likely to cause unrest among prisoners. Therefore, these magazines were distinguished from other materials based on their potential impact on security. Security is a neutral governmental interest, and the denial of the magazines operated in a neutral way.

3. There is a rational connection between denying the magazines and prison security.

Denying Webster access to the magazines was rationally related to security because the magazines could reasonably be expected to provoke unrest. A regulation is rationally related to the governmental interest if the prison reasonably concluded that the regulation would advance the governmental interest. *Sisney v. Kaemingk*, 15 F.4th 1181, 1190-91 (8th Cir. 2021). *Simpson v. County of Cape Girardeau, Missouri*, 879 F.3d 273, 279-80, 282 (8th Cir. 2018) held that a prison regulation limiting incoming mail to postcards was rationally related to security because it reduced the risk of contraband entering the prison by mail. The prison did not need to show that contraband had previously entered the prison by mail or that the policy would actually further security. *Id.* at 280. Rather, the court asked whether it was reasonable to think that the policy would reduce the risk of an incident occurring. *Id. Simpson* demonstrates the substantial deference courts owe to prisons when reviewing prison regulations. *See, e.g., Thornburgh*, 490 U.S. at 408; *Murchison v. Rogers*, 779 F.3d 882, 888 (8th Cir. 2015). Similar to the prison in *Simpson*, Carter acted to reduce the risk of an incident that would threaten security. Carter reasonably believed that the February, March, and April issues of *Sports Illustrated* and *CollegeJam* would contain coverage of March Madness. The magazines would prompt increased focus on the tournament and may provide prisoners with brackets to use in unsanctioned tournament pools. This activity would reasonably be expected to cause unrest, given LCF's recent experience with violence due to unhealthy competition during the NFL playoffs.

Therefore, Carter reasonably concluded that withholding Webster's magazines would reduce the risk of unrest, and his decision was rationally related to security.

The availability of other information about sports within the prison is not inconsistent with Carter's decision to withhold the six magazines. Prisons can distinguish between similar materials based on the threat they pose to the prison, *see Dawson*, 986 F.2d at 262, as long as permitted materials containing the same type of content as prohibited materials are not so widespread within the prison as to make the prison's actions arbitrary, *Murchison*, 779 F.3d at 890-91. Carter identified and withheld a particularly threatening type of sports content, information about March Madness. While Carter has permitted some information about March Madness to remain available to prisoners, it is deliberately limited. There is limited availability of newspapers, and the remaining magazines do not contain extensive March Madness coverage. The sports content allowed within the prison provides alternative means to access information about sports but is not permitted so loosely as to make the prison's actions arbitrary.

B. Webster Has Alternative Means to Exercise His Right to Access Information About Sports, Including T.V., Magazines, and Newspapers.

Webster's asserted right is the right to access information about sports. Under *Turner*, the asserted right should be defined "expansively." *Thornburgh*, 490 U.S. at 417. Therefore, Webster's right is not the right to access a particular article, as this would be a narrow view, but the right to access information about sports.

Information about sports is available to Webster through alternative means. Alternative means to exercise a prisoner's right to access information exist when the subject matter sought is available from other sources and, where a publication is sought, if other issues of the publication are available. *Murchison*, 779 F.3d at 891. In *Murchison*, the prison denied Murchison access to a *Newsweek* magazine that contained an article about drug cartels. *Id.* at 885-88. The court did

not consider whether the specific article was inaccessible but whether the entire subject matter or publication had been banned. *Id.* at 891. Murchison had alternative means to exercise his right because he had access to other issues of *Newsweek* and to information about drug cartels through materials in the prison library. *Id.* Similar to Murchison, Webster has alternative means to exercise his right because the publications he seeks have not been entirely banned, and the subject matter he seeks is available from other sources. Webster has access to information about sports through the televisions in his bunk and the Dayroom, other sports magazines, and newspapers. Therefore, Webster has alternative means to access information about sports.

C. Accommodating Webster's Asserted Right by Allowing Him to Receive the Magazines Would Cause a Ripple Effect on the Prison.

Providing Webster with the magazines would have a significant ripple effect on the prison. When accommodating the asserted right will have a significant ripple effect on the prison, the third *Turner* factor weighs in favor of the prison's regulation. *Turner*, 482 U.S. at 90. When the asserted right is the right to access information, a significant ripple effect will occur when that information is likely to be disseminated throughout the prison, *Sisney*, 15 F.4th at 1191, and would have a disruptive and disorderly effect on the prison, *Murchison*, 779 F.3d at 891-92. Publications are easily disseminated and would likely be shared with other prisoners, as LCF experienced during the NFL playoffs. *See Thornburgh*, 490 U.S. at 412. Webster's magazines would also have a disruptive and disorderly effect on the prison, leading to violence and unrest prompted by competition over March Madness, similar to Carter's experience during the NFL playoffs. This harm to security and order constitutes a significant ripple effect.

D. There Are No Alternative Regulations that Would Fully Accommodate Webster's Right at a de Minimis Cost to the Prison.

There are no alternatives to the prison's decision that pose a de minimis cost to the prison. An alternative regulation poses a de minimis cost if it does not require additional resources, *see Murchison*, 779 F.3d at 892-93, and would not lead to greater harm as compared to the current regulation, *Thornburgh*, 490 U.S. at 419. Webster suggested that prison staff cut out the article he was interested in reading about Longview College and provide it to him. Carter rejected this alternative because it would either lead to greater unrest, as other prisoners would be angry that Webster received special treatment, or would require the prison to cut out specific articles for any prisoner upon request, demanding significant prison resources. The Eighth Circuit has previously rejected this alternative. *See Murchison*, 779 F.3d at 892-93 (finding that requiring prison staff to remove a violent article from a magazine before providing it to Murchison did not pose a de minimis cost); *Sisney*, 15 F.4th at 1193 (noting that page-by-page censorship is not a viable alternative). The same reasoning holds for requiring the prison to make different policies for different dorms based on security needs. Prisoners would likely be angered by another dorm's special treatment, and enforcing different policies among several dorms would require more prison resources. Therefore, there are no alternatives to withholding the magazines that do not require additional resources and would not lead to greater harm to the prison.

Conclusion

For these reasons, Herman Carter asks the Court to grant his motion for summary judgment.

Applicant Details

First Name	**Danny**
Last Name	**Shokry**
Citizenship Status	**U. S. Citizen**
Email Address	**ds1768@georgetown.edu**
Address	**Address** Street **46 Oak Lane** City **Staten Island** State/Territory **New York** Zip **10312**
Contact Phone Number	**(347) 612-5549**

Applicant Education

BA/BS From	**Cornell University**
Date of BA/BS	**May 2021**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 1, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Georgetown Environmental Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Heinzerling, Lisa
heinzerl@law.georgetown.edu
Tobia, Kevin
kt744@georgetown.edu
Donohue, Laura
lkdonohue@law.georgetown.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Danny Shokry
46 Oak Lane
Staten Island, NY 10312
ds1768@georgetown.edu | (347) 612-5549

June 12, 2023

The Honorable Judge Jamar Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a second-year law student at Georgetown University Law Center. I am writing to apply for a clerkship in your chambers for the 2024 term, or any term thereafter.

My transcript, resume, writing sample, and letters of recommendation are enclosed. My recommenders are:

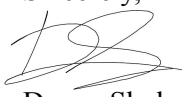
Professor Laura Donohue
(202) 662-9455
lkdonohue@law.georgetown.edu

Professor Liza Heinzerling
(202) 662-9115
heinzerl@georgetown.edu

Professor Kevin Tobia
(202) 662-9771
Kevin.Tobia@georgetown.edu

Please let me know if I can provide any additional information. I can be reached at (347) 612-5549 or ds1768@georgetown.edu. Thank you for considering my application.

Sincerely,



Danny Shokry

Danny Shokry

2337 18th St NW, Washington, D.C. 20009
ds1768@georgetown.edu | (347) 612-5549

EDUCATION

Georgetown University Law Center — Washington, D.C.
Juris Doctorate — Expected May 2024
GPA: 3.77
Honors: C. Keefe Hurley Scholar; Endowed Opportunity Scholar; Dean's List, 2021-2022
Activities: OutLaw (Secretary); Middle Eastern North African Law Students Associations (Treasurer); Georgetown Environmental Law Review (Staff Editor and Executive Editor); RISE Scholar; Constitutional Law I RISE Tutor; Criminal Justice Tutor; Law Library Reference Desk Clerk

Cornell University, College of Arts and Sciences — Ithaca, NY
Bachelor of Arts in Biological Sciences, with a concentration in Neurobiology and Behavior — May 2021
Minors: Environmental & Sustainability; Law and Society
Honors: Dean's List, 2018 - 2020; American Mock Trial Association All-American Witness, 2018
Activities: Mock Trial (Captain and E-Board), 2017 - 2021; Cornell Arts & Sciences Ambassador and Peer Advisor, 2019 - 2021; Undergraduate Teaching Assistant, 2021; Student Hospitality Worker, 2017 - 2020

EXPERIENCE

Selendy Gay Elsberg — Washington, D.C.
Summer Associate — May 2023 – Present

Georgetown University Law Center — Washington, D.C.
Graduate Research Assistant for Professor Tobia — Jan 2022 – Dec 2022

- Identify and label metalanguage (language that describes or analyzes other language) and respective cues in Supreme Court opinion to create a data bank for artificial intelligence training
- Collected data about current Supreme Court Justices' language in past scholarship about what constitutes "a reasonable person"

United States District Court for the District of Columbia — Washington, D.C.
Judicial Extern for Judge Christopher R. Cooper — Aug 2022 – Nov 2022

- Researched and drafted bench memoranda in response to multiple cases, including settlement disputes and FSIA cases
- Provided legal research and editing support to law clerks and judge preparing bench memoranda and draft opinions

Beck Redden — Houston, TX
Summer Associate — May 2022 – June 2022

- Managed a contract dispute case under attorney supervision, including researching applicable statutes and case law, deciding venue, drafting a complaint, and communicating with the client
- Observed depositions and discussed effective strategies with attorneys

Cornell Defenders — Ithaca, NY
Undergraduate Intern — June 2020 – Aug 2020

- Provided legal research to public defenders representing indigent defendants in criminal and family law matters

INTERESTS

American Sign Language; small boat sailing; bouldering

Record of: Danny Shokry
GUID: 821601746

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	001	91	Civil Procedure Kevin Arlyck	4.00	A-	14.68	
LAWJ	004	11	Constitutional Law I: The Federal System Laura Donohue	3.00	A	12.00	
LAWJ	005	13	Legal Practice: Writing and Analysis Kristen Tiscione	2.00	IP	0.00	
LAWJ	008	91	Torts Girardeau Spann	4.00	A-	14.68	

	EHrs	QHrs	QPts	GPA
Current	11.00	11.00	41.36	3.76
Cumulative	11.00	11.00	41.36	3.76

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	002	12	Contracts Nakita Cuttino	4.00	A-	14.68	
LAWJ	003	12	Criminal Justice Paul Butler	4.00	A-	14.68	
LAWJ	005	13	Legal Practice: Writing and Analysis Kristen Tiscione	4.00	B+	13.32	
LAWJ	007	91	Property Michael Gottesman	4.00	A-	14.68	
LAWJ	1349	50	Administrative Law Lisa Heinzerling	3.00	A-	11.01	
LAWJ	611	06	World Health Assembly Simulation: Negotiation Regarding Climate Change Impacts on Health Kathryn Gottschalk	1.00	P	0.00	

Dean's List 2021-2022

	EHrs	QHrs	QPts	GPA
Current	20.00	19.00	68.37	3.60
Annual	31.00	30.00	109.73	3.66
Cumulative	31.00	30.00	109.73	3.66

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	1491	01	Externship I Seminar (J.D. Externship Program) Sandeep Prasanna		NG		
LAWJ	1491	119	~Seminar Sandeep Prasanna	1.00	A	4.00	
LAWJ	1491	121	~Fieldwork 3cr Sandeep Prasanna	3.00	P	0.00	
LAWJ	165	07	Evidence Gerald Fisher	4.00	A	16.00	
LAWJ	1663	05	The Federal Courts and the World Seminar: History, Developments, and Problems Kevin Arlyck	2.00	A-	7.34	
LAWJ	1711	05	Separation of Powers Seminar: Hot Topics in Scholarship Josh Chafetz	3.00	A	12.00	
LAWJ	317	05	Negotiations Seminar Kondi Kleinman	3.00	A	12.00	

In Progress:

	EHrs	QHrs	QPts	GPA
Current	16.00	13.00	51.34	3.95
Cumulative	47.00	43.00	161.07	3.75

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	146	08	Environmental Law	3.00	A-	11.01	
LAWJ	178	05	Federal Courts and the Federal System	3.00	A-	11.01	
LAWJ	215	07	Constitutional Law II: Individual Rights and Liberties	4.00	A	16.00	
LAWJ	351	08	Trial Practice	2.00	A	8.00	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	12.00	12.00	46.02	3.84
Annual	28.00	25.00	97.36	3.89
Cumulative	59.00	55.00	207.09	3.77

End of Juris Doctor Record

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Danny Shokry for a judicial clerkship with you.

I am lucky enough to have had Danny as a student in two of my courses so far: Administrative Law (taught as a first-year elective) and Environmental Law. Through discussions in the classroom and in office hours, I feel I've come to know Danny well. He is a wonderful person, with an infectiously cheerful disposition despite the seriousness with which he takes his studies. In both of my classes, Danny was an indispensable part of the classroom dialogue, weighing in with a healthy skepticism about agencies' and courts' approaches to the legal questions we were studying and continually bringing in relevant insights from adjacent areas of law. Danny earned an A- on the final exams in both courses, having written well-constructed exams that made excellent use of a large range of the topics we had covered. From Danny's law school transcript, which reports an impressive overall GPA of 3.75 through the fall semester of 2022, one can see that Danny's fine performance in my classes is of a piece with his other academic work.

Danny has also flourished outside of the classroom. He is an editor of the *Georgetown Environmental Law Review*, a tutor in Criminal Justice, the Treasurer of the Middle Eastern North African Law Students Associations, and the secretary of OutLaw. He has externed for Judge Christopher Cooper of the federal district court in D.C. During his undergraduate years at Cornell, Danny studied biological sciences with a focus on neurobiology and behavior, and paired his studies with laboratory research on memory formation. Danny is thus an atypical law student insofar as he is as comfortable with scientific and quantitative concepts as he is with legal argument. As a member of Cornell's mock trial team, Danny was ranked at nationals as the best individual participant in the whole competition. Danny is, in short, a person of wide-ranging interests and multiple talents.

Danny's achievements are all the more remarkable when one knows something about his personal background. Danny is a RISE Scholar at Georgetown. RISE is a program created to serve law students who come from backgrounds that have historically been underrepresented in the legal academy and profession. Danny comes from a family of Coptic Christians from Egypt. After his father was kidnapped and tortured on account of his religious views, the family fled to the United States to escape persecution. Danny was 7 years old and spoke little English. While taking English as a Second Language for six years after coming to this country, Danny fell in love with math and science, eventually pivoting to an interest in law as a consequence of reading and appreciating the Supreme Court's pathbreaking opinion in *Obergefell v. Hodges*. Rereading Danny's exams from my courses for the purpose of writing this letter, I marveled at the distance – both geographical and metaphorical – Danny has traveled in a few short years. I believe your chambers would benefit greatly from his presence.

I recommend Danny Shokry to you without reservation. I hope these comments are helpful to you in considering his application. Please let me know if I can be of any further assistance.

Sincerely,

Lisa Heinzerling
Justice William J. Brennan, Jr. Professor of Law

Lisa Heinzerling - heinzerl@law.georgetown.edu

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write this letter on behalf of Danny Shokry, Georgetown Law (expected 2024), who has applied to your chambers for a clerkship. I am an Associate Professor at Georgetown Law, where I teach and write in statutory and constitutional interpretation, torts, and empirical legal studies. I have taught hundreds of students, as an instructor at Oxford and Georgetown Law and as an assistant-in-instruction or teaching fellow at NYU Law, UCLA Law, and Yale Law. Among all of these impressive students, Danny stands out as an extremely impressive, promising, and well-rounded student. I offer the most enthusiastic support of his clerkship application to your chambers.

I first met Danny during a lunch program for "OutLaw," Georgetown Law's LGBTQIA+ law student association. OutLaw invites Georgetown Law professors to lunch with groups of students. Danny made a great impression from the start. He was one of the few students who submitted a thoughtful question in advance of the lunch program, and he was quick to follow the substantive part of my lunch talk, about statutory interpretation. At the lunch, he was friendly and professional.

Danny is pro-active. Shortly after the lunch event, he emailed me to ask whether I am recruiting RAs. I prefer to hire 2L and 3L students, but Danny had an impressive background, even among strong Georgetown Law students: His undergraduate grades are excellent, he worked as a science research assistant, and previously interned for a group of public defenders.

His interview confirmed my high expectations. Danny understood my projects immediately and asked insightful questions about the research. We had an impressively wide-ranging discussion about legal issues from Danny's classes and the real world. In short, Danny stood out as a bright, eager, curious, and dedicated student. He was an easy choice to hire as an RA.

As an RA, Danny took on several big projects, and I was impressed by his ability to juggle so much. One of his projects involved reading a large number of Supreme Court opinions and "coding"/annotating them for various legal and linguistic properties. The project was coordinated between myself and a Georgetown Linguistics professor, with the primary goal of studying judicial use of "meta-language" (that is, language about other language, like "the meaning of the clause is…"). Several RAs were involved in the coding. Danny was a great coder. He worked quickly *and* accurately. Danny also helped me with a project related to "the reasonable reader." Here too, Danny read a large number of Supreme Court opinions, distilling features of the "reasonable" and "ordinary" reader into an extremely clear and helpful spreadsheet.

Danny also took initiative. I was (too) busy during part of the time in which Danny was working, and Danny helped keep several of my projects run on time. Danny never overstepped his role, but he was admirably attentive to the project's needs, helpfully moving into a leadership role and picking up (my) slack. Danny has a wonderful combination of hard and soft skills, including legal ability, acumen, and diligence. He would be an ideal member of any team, and I have no doubt he would flourish as a clerk.

Although I have not had Danny as a student in my class, I have reviewed his transcript and a writing sample. His 1L grades are very good. The Georgetown 1L curve is steep and consistent A- grades indicate strong performance. His 2L grades have taken an even further upward trajectory. Academically, Danny is a very impressive student.

Danny's writing is also excellent. His research memos were clear, well-reasoned, and to the point. In writing this letter, I reviewed Danny's legal memo for his legal practice course. That memo strikes me as very good legal writing.

Danny has clearly flourished academically, in his undergraduate work and throughout his time at Georgetown. He has also flourished in his extracurriculars, serving in leadership roles for OutLaw (LGBTQIA+ law students), the Middle Eastern North African Law Students Association, and the Georgetown Environmental Law Review.

He has also gained practical legal experience, as a judicial extern for Judge Christopher R. Cooper, U.S. District Court for the District of Columbia, and as a summer associate at Beck Redden. In discussing his work experiences with Danny, it was clear that Danny's supervisors saw his ability. In some of these experiences, Danny was given significant responsibility and the employers' feedback was enthusiastically positive.

Beyond Danny's legal talent, work ethic, leadership ability, and writing skills, he is also a delightful person. Danny was well-liked and respected by his fellow research assistants. He is friendly and thoughtful. He is also a team-player, who is polite, articulate, thoughtful, professional, and modest. In every setting in which I've known Danny, he brings a positive outlook and collaborative spirit. He is also one of the most eager and curious students with whom I've worked. He would make for a wonderful clerk: I can easily imagine Danny diving into a broad range of legal work with excitement and dedication.

Kevin Tobia - kt744@georgetown.edu

In sum, Danny has the rare mix of legal intellect, diligence, collegiality, and an ability to work fast and get the details right. I predict that Danny would be an excellent law clerk, and I would be happy to discuss his experience further at any time. Thank you for considering his candidacy.

Sincerely,

Kevin Tobia, J.D., Ph.D. (Philosophy)
Associate Professor of Law

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in strong support of Mr. Danny Shokry, who is applying for a clerkship in your chambers. I first got to know Danny when I taught him Constitutional Law I during his 1L autumn. We have continued to meet regularly as he has progressed through law school. He is a truly remarkable person, whose background has deeply shaped why he has gone into the law. He brings an important perspective that would be invaluable in chambers. He also is a stellar law student. I recommend him without reservation.

Danny's background is remarkable. He was seven years old when his family suddenly had to leave Cairo, Egypt to seek asylum in the United States. His family is Coptic, a Christian ethnoreligious group which faces severe persecution in Egypt. Although he had frequently heard derogatory remarks made to him and his family, and, because of bombings targeting Coptics in Cairo, had been afraid when they went to Christmas and other days of worship, he was not aware at the time the extent to which his family had been targeted. He found out, years later, that his Grandmother had awakened to a bomb on her balcony. Danny's father, in turn, who was a Christian pastor and had travelled to different communities across Egypt, had been arrested and tortured because his teachings had been heard by a prominent government official's daughter. The family fled the country and arrived in the United States. Last year, for the first time, his father showed him his asylum "application" – a piece of paper his father had written in broken English, which recounted his experience and plead for refuge within America for his family.

When Danny first arrived in New York, he was overwhelmed. He did not speak much English and for the next six years was enrolled in ESL. In the meantime, it was through math that he found a connection to others – a common language that could give him a sense of belonging. Math provided a gateway then to science, prompting him in eighth grade to apply to the Science Institute – a specialized math and science school in New York. While he was there, he worked on his English skills in particular – leaning into his weaknesses to try to learn how better to communicate. About a year after he joined his high school mock trial team, the Supreme Court ruled in *Obergefell v. Hodges* – a case particularly influential for Danny at the time, in light of his understanding that he was gay, as well as his fear of telling his family, which is extremely religious.

These two experiences – the contrast between Egypt and the United States in his ability to practice his religion without fear of persecution, as well as the importance of the judicial system in protecting his rights and those of others like him – instilled in him a deep commitment to the rule of law.

When he entered Cornell, Danny found himself at a crossroads. While he still loved science, he wanted to explore more the side of oral advocacy. He joined Cornell's mock trial team, where he made it to nationals and placed in the top ten teams in the United States. He individually was ranked as the best participant in the country. His sophomore year, he joined the executive board for the mock trial team and proceeded to take a number of undergraduate law classes taught at the law school. He was work study in college, and he went on to balance his demanding academic schedule, neuroscience research, and working in the dining hall and later the cafes on campus. Despite the impact of COVID in his junior year, Danny worked with Cornell Defenders, a program that partnered with Cornell Law to provide undergraduate and law students an opportunity to work for Ithaca's public defenders.

At Georgetown Law, Danny's love of, and commitment to, the law is evident. He excelled in my course. Although ConLaw I is only 3 credits, the material I use in many ways reflects a 4-credit course. To help the students prepare for constructing and responding to originalist and purposive constitutional arguments, I begin with the Magna Carta and the beheading of Charles I before moving to the Glorious Revolution and the English Bill of Rights as precursors to the Virginia Declaration of Rights and the Declaration of Independence. The students then read the Articles of Confederation and look at where the framework failed, before considering the debates at the Constitutional Convention, the subsequent ratification of the U.S. Constitution by the states, and the adoption of the Bill of Rights.

At that point, the course begins to look more like a conventional ConLaw course, as we turn to *Marbury v. Madison*. We study separation of powers and federalism, with the discussion ranging from the 10th Amendment to sovereign immunity. Students consider the enumerated powers in Article I(8), with particular emphasis on tax and spend, the commerce clause, and the necessary and proper clause, before turning to Art. II, executive direction and control, and Art. I/Art. II war powers. We then look political question doctrine and the role of the courts. At the end, the course returns to the question of whether the structure was sufficient to safeguard rights, with emphasis on the First Amendment.

In brief, the students have to absorb a tremendous amount of material and gain breadth and depth.

Mr. Shokry came every day, prepared, and was willing to take on arguments with which he both agreed and disagreed, to probe

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the strengths and weaknesses of precedential, purposive, historical, textualist, structuralist, and policy-based arguments. I cold call all students every class and encourage debate, tracking their participation. In 23 classes, he participated in the debate approximately 40 times – he also came to about a quarter of my office hours during the term, to ensure that he understood the materials.

Danny earned an A on the final – one of only a few students in the class to do so. My class is far from the only place where he has excelled. He currently maintains a 3.75 GPA at Georgetown Law.

Danny went on to tutor students in my ConLaw I class this year, as part of the support provided to students in the RISE program, which is designed to help students who come from non-traditional backgrounds – such as first generation college students and ethnic or racial minorities.

Danny has assumed numerous leadership roles at Georgetown Law. He is the Secretary of OutLaw, the Treasurer of the Middle Eastern North African Law Students Association, and both a Staff Editor and Executive Editor of the *Georgetown Environmental Law Review*.

The reason Danny wants to clerk is to continue to hone his research and writing skills and to learn as much as he can about the judicial process to help him to become an in-court advocate. He is eager to see many different types of approaches to advocacy in the courtroom. And he is keen to learn more about how judges approach the law.

As an immigrant from a low socioeconomic background, Danny would benefit tremendously from the mentorship that is part of the clerkship opportunity.

Danny's experiences in life, and the ways he has risen to meet the challenges he has faced, are remarkable. His legal abilities are extremely strong. He is also humble, kind, and just a lovely person. He would be a joy to have as part of a clerkship cohort. I recommend him without reservation.

Please feel free to reach out to me at 202-531-4433 if you have any further questions about his candidacy.

Yours sincerely,

Laura K. Donohue, J.D., Ph.D. (Cantab.)
Scott K. Ginsburg Professor of Law and
National Security Professor of Law

Danny Shokry

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June 12, 2023

The attached writing sample is a bench memorandum that I drafted as an assignment when I was a judicial intern at the United States District Court for the District of Columbia in Judge Christopher R. Cooper's chambers. The assignment was to read through the factual record, identify the issues, conduct research, and give guidance on how the Court should rule in a FOIA case where the Plaintiff believes the parties had reached a valid settlement agreement, but the Defendant did not. I performed all the research and writing myself. Although I received verbal feedback from a senior writing fellow at Georgetown University Law Center's Writing Center, this writing sample is substantially my writing.

All identifying facts and names have been redacted for confidentiality purposes. I am submitting the attached writing sample with the permission of Judge Cooper's chambers.

Statement of the Issue Presented for Review

Did the parties reach a valid, enforceable settlement agreement where defense counsel, a DOJ employee, had authorization from the Government Agency, but not from DOJ supervisors, and only Plaintiff signed the agreement?

Conclusion

The parties likely did not have a valid settlement agreement. First, the Defense did not express the requisite intent to be bound by the agreement. The agreement's express terms required both parties' signatures to be binding. The Defendant never signed the agreement, and therefore, it was not binding.

Second, defense counsel lacked the authority to bind the federal government to the settlement agreement. Defense counsel's representations that Defendant was willing to accept to accept the settle agreement do not bind the government because apparent authority is inapplicable against the federal government. In addition, as an AUSA, defense counsel did not have sufficient authority on his own. Defense counsel also did not have actual authority from DOJ supervisors as is required by DOJ policies. Similarly, the Government Agency's authorization was insufficient because authority to accept settlement agreements rests with the DOJ, not the Government Agency.

Statement of the Case

I. Factual Background

Plaintiff Environmental Group is a nonprofit based out of a Western state. Compl. ¶ XX. On [date], Plaintiff submitted a written request to Defendant seeking records regarding a land exchange. Compl. ¶ XX. Defendant is the federal agency that maintains the land exchange records that Plaintiff was seeking. Compl. ¶ XX. Plaintiff's request was denied by Defendant without any formal determination or advising Plaintiff of appeal rights. Compl. ¶ XX. Defendant did not consider the [date] request a proper FOIA request. Ans. ¶ XX; ECF XX at XX.

a. [Date] FOIA Request

On [date], Plaintiff submitted a FOIA request for the land exchange records. Compl. ¶ XX. On [date], Defendant confirmed it had received the FOIA request. Compl. ¶ XX. On [date], Defendant provided its first interim response in the form of records released in full. Compl. ¶ XX. On [date], Defendant informed Plaintiff it had identified additional relevant pages and was going to release approximately half, claiming FOIA Exemptions 3, 5, and 6 for the rest. Compl. ¶ XX; ECF XX at X.

On [date], Plaintiff reached out to Defendant's employee seeking a specific record. Compl. ¶ XX. Defendant's employee informed Plaintiff that she did not have nor will she receive the records Plaintiff was seeking, and that Defendant would only receive an analyzed version of the record ("TARP"). Compl. ¶ XX. Defendant's employee also told Plaintiff that she had not sent them the TARP for the land exchange in the first response, despite having received it on [date]. Compl. ¶¶ XX-XX

b. [Date] FOIA Request

On [date],[1] Plaintiff sent an email to Defendant's employee seeking the TARP. Compl. ¶ XX. On [date], Plaintiff received a letter from Defendant's FOIA office stating that Defendant had considered the email as a second FOIA request and confirmed receiving it. Compl. ¶ XX. Defendant also provided an entirely redacted copy of the TARP and claimed FOIA Exemption 5. Compl. ¶ XX. On [date], Plaintiff requested an unredacted version. Compl. ¶ XX. Approximately two weeks later, Defendant rejected Plaintiff's request based on FOIA Exemption 5 and informed Plaintiff on its right to appeal. Compl. ¶ XX.

The deadline to respond to this FOIA request was [date].[2] Compl. ¶ XX.

c. [Date] FOIA Request

On [date], Plaintiff submitted another FOIA request seeking the actual record that the TARP analyzed. Compl. ¶ XX. On [date], Defendant confirmed it had received the FOIA request, identified relevant records, but was withholding them under FOIA Exemptions 5 and 6. Compl. ¶ XX.

[1] Date typo. Actual text says "[Date]"

[2] It is unclear why this was included in the complaint since the agency responded by [date].

d. [Date] Appeal for the [date] and [date] FOIA Requests

On [date], Plaintiff submitted an administrative appeal for its [date] and [date] FOIA requests. Compl. ¶ XX. On [date], Defendant confirmed receiving the appeal. Compl. ¶ XX. Defendant claims that this appeal did not include the [date] FOIA request, and even if it did, the deadline to appeal that FOIA was [date], and therefore it was too late. Ans. ¶ XX; ECF XX at X.

On [date], the statutory deadline for Defendant's response to the appeal had passed. Compl. ¶ XX. On [date] and [date], Plaintiff inquired into the status of their appeal, which was still processing. Compl. ¶ XX-XX. On [date], Defendant had finished its review of the appeal, releasing some of the previously withheld records and withholding others under Exemptions 5 and 6. Compl. ¶ XX.

e. [Date] Appeal for the [date]FOIA Request

On [date], Defendant filed an appeal for the [date] FOIA request. Compl. ¶ XX. On [date], Defendant had confirmed it was processing this appeal. Compl. ¶ XX. Plaintiff has not yet received a final determination of this appeal. Compl. ¶ XX. On [date], Defendant released over 1,000 pages and withheld fifty pages under Exemptions 5 and 6 in response to both appeals. ECF XX at X.

II. Procedural Posture

Plaintiff filed a complaint on [date]. Compl. at XX. Defendant filed an answer on [date], asserting three defenses: Plaintiff failed to exhaust administrative remedies by failing to file a timely appeal, Defendant complied with FOIA's requirements, and Defendant did not have to produce all the records as they properly fell within FOIA exemptions. Ans. at XX-XX. On [date], Defendant filed a motion for summary judgment asserting the defenses identified in the answer. ECF XX.

On [date], Plaintiff reached out to Defendant to negotiate a settlement agreement. ECF XX at X. Plaintiff and Defendant negotiated in good faith for over three months. ECF XX at X-X; ECF XX at X. Plaintiff, with Defendant's consent, requested extending its deadline to respond to Plaintiff's summary judgment motion three times. ECF XX at X. The Court extended the deadline to [date] and encouraged both parties to finalize the settlement agreement within 30

days. ECF XX at X. The Court also said that if no settlement is reached within 30 days, then deadlines for the summary judgment briefing would be due. ECF XX at X-X.

On [date], defense counsel represented to Plaintiff that the Government Agency had approved the terms of the settlement agreement. ECF XX at X; ECF XX-XX at X. The parties continued to make procedural and non-substantive edits to the settlement agreement. ECF XX at X. On [date], defense counsel represented to Plaintiff that his supervisor had approved the settlement agreement, pending one change. ECF XX-X at X. The same day, Plaintiff consented to the change and signed the settlement agreement. ECF XX-X at X. Defense counsel, however, never signed the settlement agreement. ECF XX at XX. The settlement agreement would have fully resolved Plaintiff's claims, leaving only attorney's fees to be decided on later. ECF XX at X.

Later that day, defense counsel called Plaintiff and informed Plaintiff that Defense's supervisor required changes be made. ECF XX at XX. The parties attempted to assuage the supervisor's requirements to no avail. ECF XX at XX. Two days later, defense counsel relayed that their supervisor required the settlement agreement to be rewritten and raised other substantive edits to Plaintiff. ECF XX-X at X.

On [date], the Court held a status conference between the two parties, but no agreement was reached. ECF XX at XX. The parties agreed to convene four days later. ECF XX at XX. However, later that same day, defense counsel told Plaintiff that the proposal was withdrawn, and Plaintiff should file its motion. ECF XX-X at X. The Plaintiff filed a motion seeking to enforce the [date] settlement agreement. ECF XX at X. Defendant filed a motion opposing the enforcement and Plaintiff filed another motion in response. ECF XX-XX.

Legal Standard

"It is well established that federal district courts have the authority to enforce settlement agreements entered into by litigants in cases pending before them." Samra v. Shaheen Bus. and Inv. Group, Inc., 355 F. Supp. 2d 483, 493 (D.D.C. 2005) (citing Autera v. Robinson, 419 F.2d 1197, 1200 (D.C. Cir. 1969)). The party moving to enforce a settlement agreement bears the burden of proving that the parties formed a binding agreement by clear and convincing evidence. Blackstone v. Brink, 63 F.Supp.3d 68, 76 (D.D.C. 2014). If there is a genuine dispute "about

whether the parties have entered into a binding settlement, the district court must hold an evidentiary hearing that includes the opportunity for cross-examination." Samra, 355 F. Supp. 2d at 493 (quoting United States v. Mahoney, 247 F.3d 279, 285 (D.C. Cir. 2001)). The hearing's purpose is to allow the court to make credibility determinations and allow factual issues to be adequately explored. Id. (citing Autera, 419 F.2d at 1202).

"[W]hether parties have reached a valid settlement is a question of contract law." Id. at 494 (citing Mahoney, 247 F.3d at 285). Contract formation is controlled by the law of the state. Makins v. District of Columbia, 277 F.3d 544, 547-48 (D.C. Cir. 2002). Plaintiff contends that D.C. law controls here, ECF XX at XX, and Defendant not contest Plaintiff and cites D.C. law. ECF XX at XX; ECF XX at X.

Argument

I. The Parties Likely Did Not Enter Into an Enforceable Agreement

Under D.C. law, an enforceable contract exists when (1) there is an agreement to all the material terms, (2) both parties express an intent to be bound, and (3) parties have the authority to enter into a contract. Makins, 277 F.3d at 547-48. Defendant that there was an agreement to all the material terms,[3] but contests an expression of an intent to be bound and authority to enter into a binding argument. ECF XX. The parties likely did not express an intent to be bound and defense counsel likely lacked the authority to enter into the settlement agreement, and therefore, an enforceable contract does not exist.

a. Defendant Likely Did Not Express an Intent to Be Bound by the Settlement Agreement

Defendant likely did not express an intent to be bound by the settlement agreement. Neither party contests Plaintiff's expression of its intent. Thus, only Defendant's intent is at issue. Courts can examine the written agreement itself to determine if there was an intent to be bound. Ekedahl v. CORESTAFF, Inc., 183 F.3d 855, 858 (D.C. Cir. 1999) (applying D.C. law).

[3] Plaintiff argues that since there was a "final version" ready to be signed, the parties had an agreement to all the terms contained therein. ECF XX at XX. Plaintiff argues that the agreement would have set forth the terms and conditions of the parties' compromise to the FOIA searches conducted by Defendant, the FOIA exemptions applicability, and Defendant's policies. ECF XX at XX-XX. Plaintiff argues that these compromises were bargained for by the parties, and thus are legally sufficient consideration. ECF XX at XX.

Id. Although a signature is the clearest evidence of an intent to be bound, it is not essential. Hood v. District of Columbia, 211 F. Supp. 2d 176, 180 (D.D.C. 2002) (applying D.C. law). However, an agreement's terms may require a signature to bind the parties. Carter v. Bank of Am., 845 F. Supp. 2d 140, 144-45 (D.D.C. 2012) (applying D.C. law) ("no contract will be formed unless and until defendants sign the Loan Modification Agreement."); see also Osseiran v. Int'l Fin. Corp., No. 06-336, 2010 WL 11636217, at *3 (D.D.C. June 28, 2010) (applying D.C. law) ("only the document as executed by [the parties] will contain the terms that bind them. Until the document is executed by [the parties], neither [party] intends to be bound."); see also Whittaker v. United States, No. 19-199, 2021 WL 2913626, at *8 (D.D.C. July 12, 2021) (applying D.C. law) (finding that where the agreement's terms did not require execution, an agreement was still binding despite a lack of a signature.).

Paragraph X of the [date] agreement stated "[t]he parties also agree that this agreement may be executed in counterparts and is *effective on the date by which both parties have executed this agreement.*" ECF XX-X at X (emphasis added). The proposed settlement agreement unambiguously required the parties to do more than just agree to the agreement's terms – it required execution. The only way that the agreement contemplates execution is through signing the agreement, and it was never signed. ECF XX-X at X. Because the agreement was never signed, it was never executed, and therefore, no enforceable contract exists.

Plaintiff may argue that defense counsel's conduct can show that the parties had agreed to all the terms contained within the [date] settlement and were "merely awaiting 'memorialization of their agreement in a more formal document.'" United House of Prayer for All People v. Therrien Waddell, Inc., 112 A.3d 330, 342 (D.C. 2015) (citing Vacold LLC v. Cerami, 545 F.3d 114, 123 (2d Cir. 2008)). Defense counsel had told Plaintiff that he required supervisory approval on multiple occasions, had acquired supervisory approval, pending one change, and would send it over to the Court once Plaintiff signed . ECF XX-X at X; ECF XX-X at X; ECF XX-XX at X-X; ECF XX-X at X. The court can inquire into the parties' action at the time of contract formation only if the written settlement agreement is ambiguous.[4] Given the plain and

[4] Ambiguity or plain meaning of the contract are questions of law. Segar v. Mukasey, 508 F.3d 16, 22 (D.C. Cir. 2007). Therefore, determination of the ambiguity or plain meaning does not require a hearing. See Samra, 355 F. Supp. 2d at 493.

unambiguous language of the settlement agreement, the court should not consider the party's conduct.

b. Defense Counsel Likely Lacked the Authority to Bind Defendant to the Settlement Agreement

Defense counsel likely could not have bound Defendant to the settlement agreement because he lacked the authority to bind the federal government. An agent may bind his principal only if he has actual or apparent authority. Makins v. District of Columbia, 861 A.2d 590, 593 (D.C. 2004). Because there was no actual or apparent authority, the settlement agreement was likely made without authority to bind the Defendant. Id.

i. Apparent authority does not apply against the government.

Apparent authority exists when a third party believes that an agent has authority to bind the principal. Id. at 594 (citing Sigal Construction Corp. v. Stanbury, 586 A.2d 1204, 1219 (D.C. 1991). Apparent authority, however, does not apply against the government. E.g., Fed. Crop Ins. v. Merrill, 332 U.S. 380, 384 (1947) ("Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority."); Perkins v. District of Columbia, 146 A.3d 80, 85 (D.C. 2016). Defense counsel incorrectly relies on Burton v. Adm'r, Gen. Serv. Admin. to prove that apparent authority applies here. In Burton, the AUSA reached a settlement agreement with Burton after receiving the USFS's blessing. Burton, No. 89-2338, 1992 WL 300970, *4 (D.D.C. July 10, 1992). The court held that the "*[AUSA]'s* reliance on the representations of agency counsel as to the agency's position" are not unreasonable and that the "*[AUSA]* cannot have been expected to second-guess [agency employee]'s assurances that the agency agreed with the settlement terms [the AUSA] offered to plaintiff." Id. (emphasis added). Burton speaks to representations made by the the represented agency to the AUSA and the AUSA's reliance on such representations, not representations made by an AUSA or DOJ employee. Id. Here, however, Plaintiff maintains apparent authority for statements made by defense counsel to Plaintiff. ECF XX at XX-XX. Thus, Burton is inapplicable and apparent authority

Plaintiff also argues that even if there is a general exception, Defendant has not shown that it does not apply to FOIA defendants who agree to a non-monetary settlement. However, the Supreme Court in Fed. Crop. Ins. extremely broad language's cuts against Defendant's claim: "*Whatever* the form in which the Government functions, *anyone* entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority." 332 U.S. at 384 (emphasis added). Therefore, apparent authority is insufficient to render the settlement agreement valid.[5]

ii. Defense counsel likely did not have actual authority because he did not have supervisory approval to agree to the settlement agreement and the Government Agency's approval is insufficient.

Plaintiff claims that defense counsel had actual authority since he was authorized by the Government Agency and by DOJ supervisors to accept the settlement agreement. ECF XX at X. Defendant does not contest that defense counsel had authorization from the Government Agency but argues that defense counsel was never authorized to accept the settlement by DOJ supervisors, and therefore, the agreement is not binding.[6] ECF XX at X.

Defense counsel himself knew and clearly represented to Plaintiff that he did not have the authority to enter into a settlement agreement purely on his own authority. ECF XX-X at XX, X, XX; see [Supervisor 1] Decl. ¶ X. Courts often look to statutes, regulations, rules, or policies to determine authority. Burton, 1992 WL 300970, at *4 (looking to internal policy, but finding that it was not controlling because it was not written); Perkins, 146 A.3d at 85; see also Davis & Assoc., Inc. v. District of Columbia, 501 F. Supp. 2d 77, 81 (D.D.C. 2007) (applying D.C. law); see also Bank of Am., N.A. v. District of Columbia, 80 A.3d 650, 670 (D.C. 2013). DOJ had a written guideline that requires a supervisor approving a settlement agreement to submit a referral memorandum. U.S. Dep't of Just., Just. Manual § 4-3.320; [Supervisor 2] Decl. ¶ X; [Supervisor 1] Decl. ¶ X. Defense counsel's supervisor stated that she never approved the settlement, citing her lack of compliance with § 4-3.320 as evidence. [Supervisor 2] Decl. ¶ X-X. The failure to comply with department guidelines likely means that defense counsel's supervisors did not

[5] Defendant also claims that even if apparent authority did apply against the government, Plaintiff has not met the requirement of a showing of detrimental reliance. The Court does not need to reach the merits of this argument because apparent authority does not apply against the federal government.

[6] Defendant also argues that Plaintiff has failed to raise actual authority in its opening brief, and therefore, forfeits this argument. ECF XX at X n.X (citing Al-Tamimi v. Adelson, 916 F.3d 1, 6 (D.C. Cir. 2019)).

confer proper authority to accept the settlement agreement, nor did she attempt to do so. [Supervisor 2] Decl. ¶ X ("I conveyed that I approved the general idea of settling as to liability now and attorney's fees and costs later, so that the parties could resolve liability issues before the filing deadline. I did not, however, approve the specific draft agreement that [defense counsel] had attached to the email. Later that same day, after having reviewed the attached settlement agreement, I had numerous concerns with it and told [defense counsel] that it needed substantial revision and that I did not authorize him to execute it.").[7] Thus, defense counsel likely lacked authorization to accept the settlement agreement by his supervisor.

Government Agency's authorization is also likely insufficient. DOJ has "plenary power" in settling cases. See Burton, 1992 WL 300970, at *3 (citing 5 U.S.C. § 901 ("As to any case referred to the Department of Justice for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution or defense, now exercised by any agency or officer, is transferred to the Department of Justice.")). While "a client's right to accept or reject a settlement offer is absolute," by referring the case to DOJ, the Government Agency has transferred its settlement authority to DOJ. See In re Hager, 812 A.2d 904, 919 (D.C. 2002); cf. Vill. of Kaktovik v. Watt, 689 F.2d 222, 234-35 n.13 (D.C. Cir. 1982) (Greene, H., concurring) ("The Department of Justice has consistently referred to the Department of the Interior as its 'client' … the Justice Department's client is the United States."). Therefore, the Government Agency's authorization is likely insufficient to give defense counsel actual authority to accept the settlement agreement.

[7] Plaintiff does not seem to be contesting these facts, perhaps due to a lack of access. ECF XX at X. However, if a factual dispute does arise, a hearing with opportunity for cross examination is required. Samra, 355 F. Supp. 2d at 493.

Applicant Details

First Name	**Nathan**
Last Name	**Siegel**
Citizenship Status	**U. S. Citizen**
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Contact Phone Number	**8588633039**

Applicant Education

BA/BS From	**University of California-Los Angeles**
Date of BA/BS	**June 2016**
JD/LLB From	**University of California at Los Angeles (UCLA) Law School** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90503&yr=2011**
Date of JD/LLB	**May 10, 2024**
Class Rank	**I am not ranked**
Law Review/ Journal	**Yes**
Journal(s)	**UCLA Law Review** **UCLA Journal of Law and Technology**
Moot Court Experience	**Yes**
Moot Court Name(s)	**UCLA Internal Moot Court Competition** **UCLA Skye Donald 1L Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Nathan Siegel

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June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Re: Judicial Clerkship Application

Dear Judge Walker:

I am a rising third-year law student at UCLA School of Law, graduating in 2024. I am writing to apply for a position as a term law clerk in your chambers beginning in August of 2024.

I want to clerk in a trial court because I believe that it will best prepare me for my desired career in litigation while allowing me to experience a wide variety of cases and legal work. As a former electrical engineer who is interested in all aspects and types of litigation and the law in general, I have a wide range of academic and professional interests, and I enjoy learning about new topics. Because of this, I look forward to gaining experience in many areas of litigation and developing the skills necessary to be a well-rounded litigator. I believe that clerking in your chambers will allow me to gain this desired experience while also helping me sharpen my legal writing skills, which I have already begun to strengthen through my involvement in Law Review, in multiple board positions for UCLA's Journal of Law and Technology, as a Research Assistant for UCLA's Institute for Technology, Law and Policy, and through authoring a Comment that is scheduled to be published in UCLA's Law Review in 2024.

In sum, I believe I would be an asset to your chambers. Enclosed for your review please find my resume, transcript, writing sample, as well as letters of recommendation from Professor Clyde Spillenger, Professor Lee Petherbridge, and Professor David Babbe. The writing sample is a moot court brief that I wrote that won Best Petitioner Brief. Thank you for your time and consideration. I look forward to hearing back from you.

Respectfully,

Nathan Siegel

Nathan Siegel

Enclosures

Nathan Siegel

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EDUCATION

UCLA School of Law, Los Angeles, CA
J.D. expected May 2024 | GPA: 3.58
Honors: Moot Court Honors (for high performance in internal competitions)
Activities: Law Review, *Associate Editor*; Journal of Law and Technology, *Co-Editor-In-Chief, Co-Executive Editor*; IP Law Association, *Member*; American Constitution Society, *Member*; El Centro Clinic, *Member/Volunteer*

University of California, Los Angeles, Los Angeles, CA
B.S., Electrical Engineering, June 2016 | GPA: 3.33
Awards: Mr. and Mrs. Benton Bejach Undergraduate Scholarship (2013, 2014, 2015)
Qualcomm Scholarship (2013, 2014)
Activities: Institute of Electrical and Electronics Engineers UCLA Chapter, *Team* Lead; Engineering Society of UCLA, *Mentor*; Bruin Partners, *Volunteer*

PROFESSIONAL EXPERIENCE

Fish & Richardson P.C., San Diego, CA May 2022 – July 2022; May 2023 – July 2023
Summer Associate
- Worked on a variety of patent litigation projects including drafting legal memoranda, searching for prior art, charting patents for invalidity analysis, and analysing grounds for infringement
- Worked on a pro bono case and contributed to the firm's page for tracking Federal Circuit decisions

UCLA Institute of Technology, Law, and Policy, Los Angeles, CA December 2022 – May 2023
Research Assistant
- Conducted legal research and wrote policy proposals regarding the intersection of law and technology

UCLA Law School's Veteran's Justice Clinic, Los Angeles, CA January 2023 – May 2023
Student Attorney
- Conducted client intake interviews; counselled client and developed case strategy
- Conducted legal research and drafted legal memoranda regarding character of discharge upgrade appeals

Texas Instruments, Dallas, TX / San Diego, CA Summer 2015; August 2016 – June 2021
Application Verification and Validation Engineer, Applications Engineer
- Led projects and cross-functional initiatives across many different teams; communicated with customers
- Wrote application notes, technical reference manuals, design guides, and blog posts
- Completed tests and designs on strict product-gating deadlines and provided feedback on test status

Applications Engineering Intern, Summer 2015
- Worked with customers to investigate hardware and software issues and developed sample applications

Qualcomm, San Diego, CA Summer 2014
Engineering Intern
- Interfaced with software and hardware teams to design tests and produce detailed test documentation

PUBLICATIONS

"Women's Suffrage, Black Suffrage, and Lessons for Today: A Side-By-Side Comparison of Both Suffrage Movements and the Lessons They Provide for Current Suffrage Movements," 71 UCLA L. Rev. (forthcoming 2024).

INTERESTS

Enjoy basketball, volleyball, disc golf, reading, and volunteer coaching

NAME: SIEGEL, NATHAN S
UCLA ID: 804170400
BIRTHDATE: 11/04/XXXX

UNIVERSITY OF CALIFORNIA, LOS ANGELES
LAW ACADEMIC TRANSCRIPT

PROGRAM OF STUDY
ADMIT DATE: 08/23/2021
SCHOOL OF LAW
MAJOR: LAW
SPECIALIZING IN MEDIA, ENTERTAINMENT, TECHNOLOGY, AND SPORTS

DEGREES | CERTIFICATES AWARDED
NONE AWARDED

GRADUATE DEGREE PROGRESS
SAW COMPLETED IN LAW 565, 22F

PREVIOUS DEGREES
BACHELOR OF SCIENCE AWARDED JUNE 10, 2016 FROM UCLA
IN ELECTRICAL ENGINEERING

CALIFORNIA RESIDENCE STATUS: NONRESIDENT

FALL SEMESTER 2021
MAJOR: LAW

CONTRACTS	LAW 100		4.0	13.2	B+
INTRO LEGL ANALYSIS	LAW 101		1.0	0.0	P
LAWYERING SKILLS	LAW 108A		2.0	0.0	IP
MULTIPLE TERM - IN PROGRESS					
TORTS	LAW 140		4.0	13.2	B+
CIVIL PROCEDURE	LAW 145		4.0	14.8	A-
		ATM	PSD	PTS	GPA
	TERM TOTAL	13.0	13.0	41.2	3.433

SPRING SEMESTER 2022

LGL RSRCH & WRITING	LAW 108B		5.0	18.5	A-
END OF MULTIPLE TERM COURSE					
CRIMINAL LAW	LAW 120		4.0	13.2	B+
PROPERTY	LAW 130		4.0	14.8	A-
CONSTITUT LAW I	LAW 148		4.0	12.0	B
INTL COMPARATIVE LW	LAW 165		1.0	0.0	P
		ATM	PSD	PTS	GPA
	TERM TOTAL	18.0	18.0	58.5	3.441

FALL SEMESTER 2022

CONSTITUTIONL LW II	LAW 201		4.0	14.8	A-
PATENT LAW	LAW 306		3.0	12.0	A
TELECOM REGULATION	LAW 437		2.0	8.0	A
AMER CONSTL HISTORY	LAW 565		3.0	12.0	A
PRETRIAL CIVIL LIT	LAW 700		4.0	0.0	P
		ATM	PSD	PTS	GPA
	TERM TOTAL	16.0	16.0	46.8	3.900

SPRING SEMESTER 2023

EVIDENCE	LAW 211		4.0	13.2	B+
FEDERAL COURTS	LAW 212		3.0	9.9	B+
TRADEMARK LAW	LAW 274		4.0	14.8	A-
VETERNS JUSTCE CLIN	LAW 730		4.0	16.0	A
		ATM	PSD	PTS	GPA
	TERM TOTAL	15.0	15.0	53.9	3.593

LAW TOTALS

	ATM	PSD	PTS	GPA
PASS/UNSATISFACTORY TOTAL	6.0	6.0	N/A	N/A
GRADED TOTAL	56.0	56.0	N/A	N/A

	ATM	PSD	PTS	GPA
CUMULATIVE TOTAL	62.0	62.0	200.4	3.579
TOTAL COMPLETED UNITS		62.0		

END OF RECORD
NO ENTRIES BELOW THIS LINE

Authentication
This official transcript is printed on security paper with a blue fading background, the Seal of the UCLA Office of the Registrar, and the signature of the Senior Director of Academic Services and Registrar, Brian Hansen.

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DATE PRODUCED JUNE 07, 2023